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Washington, Tuesday, February 1, 1938

PRESIDENT OF THE UNITED STATES.

EXECUTIVE ORDER

ESTABLISHING BLACK COULEE MIGRATORY WATERFOWL REFUGE

Montana

By virtue of and pursuant to the authority vested in me as President of the United States and by the act of June 25, 1910, ch. 421, 36 Stat. 847, as amended by the act of August 24, 1912, ch. 369, 37 Stat. 497, and in order to effectuate further the purposes of the Migratory Bird Conservation Act (45 Stat. 1222), it is ordered that all the lands now or hereafter owned or controlled by the United States within the following-described area, comprising 1,160 acres in Blaine County, Montana, be, and they are hereby, reserved and set apart, subject to valid existing rights, for the use of the Department of Agriculture as a refuge and breeding ground for migratory birds and other wildlife: *Provided*, that any private lands within the area described shall become a part of the refuge hereby established upon the acquisition of title thereto or control thereof by the United States:

PRINCIPAL MERIDIAN

T. 34 N., R. 25 E.,
sec. 23, all;
sec. 24, N½ and NW¼SW¼;
sec. 26, N½N½.

This reservation shall be known as the Black Coulee Migratory Waterfowl Refuge.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
January 28, 1938.

[No. 7801]

[F. R. Doc. 38-327; Filed, January 31, 1938; 10:34 a. m.]

APPLICATION OF DUTIES PROCLAIMED IN CONNECTION WITH CERTAIN TRADE AGREEMENTS TO PRODUCTS OF AUSTRALIA

THE WHITE HOUSE
Washington, January 25, 1938

The Honorable HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

MY DEAR MR. SECRETARY: I refer to my letter addressed to you on June 26, 1936,[1] notifying you that I had found as a fact that the treatment of American commerce by the Commonwealth of Australia was discriminatory and directing that the duties proclaimed in connection with the trade agreements concluded under the authority of the Act to amend the Tariff Act of 1930, approved June 12, 1934, should cease to be applied to products of Australia entered for consumption or withdrawn from warehouse for consumption on or after August 1, 1936; and to my letter addressed to you on July 3, 1937,[1] and in particular to the fourth (unnumbered) paragraph of that letter, concerning the application of duties proclaimed in connection with the trade agreement signed on November 28, 1936, with Costa Rica and all other duties theretofore proclaimed in connection with trade agreements concluded under the authority of the Act to amend the Tariff Act of 1930, approved June 12, 1934 (48 Stat. 943), as extended by the Joint Resolution approved March 1, 1937 (Public Resolution No. 10, 75th Congress).

You are hereby notified that I find as a fact that the Commonwealth of Australia no longer applies to American commerce the treatment which caused me to suspend the application of the aforesaid duties to products of that country. I therefore direct that the aforesaid duties (with the exception of the duties proclaimed in connection with the trade agreement signed on August 24, 1934, with Cuba) shall be applied to products of Australia entered for consumption or withdrawn from warehouse for consumption on or after February 1, 1938.

The above mentioned letter of July 3, 1937, is modified accordingly, and you will please cause notice of this modification to be published in an early issue of the weekly *Treasury Decisions*.

Very sincerely yours,

[SEAL] FRANKLIN D ROOSEVELT

[F. R. Doc. 38-343; Filed, January 31, 1938; 12:34 p. m.]

[1] F. R. 684.

DEPARTMENT OF STATE.

TRADE AGREEMENT NEGOTIATIONS WITH THE GOVERNMENT OF THE UNITED KINGDOM AND WITH THAT GOVERNMENT ON BEHALF OF NEWFOUNDLAND AND THE BRITISH COLONIAL EMPIRE

PUBLIC NOTICE

Supplementary List of Products

Closing Date for Submission of Briefs—February 26, 1938

Closing Date for Application To Be Heard—February 26, 1938

Public Hearings Open—March 14, 1938

The Committee for Reciprocity Information hereby gives notice that all information and views in writing, and all applications for supplemental oral presentation of views, in regard to the supplementary list of products announced by the Secretary of State on this date in connection with the negotiation of a trade agreement with the Government of the United Kingdom, shall be submitted to the Committee for Reciprocity Information not later than 12 o'clock noon, February 26, 1938. Such communications should be ad-

[1] 2 F. R. 1447 (DI).

FEDERAL REGISTER

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dressed to "Chairman, Committee for Reciprocity Information, Old Land Office Building, Eighth and E Streets NW., Washington, D. C."

A public hearing will be held beginning at 10 a. m. on March 14, 1938, before the Committee for Reciprocity Information in the hearing room of the Tariff Commission in the Old Land Office Building, where supplemental oral statements will be heard.

Written statements must be either typewritten or printed and must be submitted in six copies of which one copy shall be sworn to. Appearance at hearings before the Committee may be made only by those persons who have filed written statements and who have within the time prescribed made written application for a hearing, and statements made at such hearings shall be under oath.

By direction of the Committee for Reciprocity Information this 24th day of January, 1938.

JOHN P. GREGG, *Secretary.*

JANUARY 24, 1938.

SUPPLEMENT TO THE LIST OF PRODUCTS ON WHICH THE UNITED STATES WILL CONSIDER GRANTING CONCESSIONS TO THE UNITED KINGDOM, NEWFOUNDLAND, AND THE BRITISH COLONIAL EMPIRE

JANUARY 24, 1938.

Pursuant to section 4 of an Act of Congress approved June 12, 1934, entitled "An Act to Amend the Tariff Act of 1930", as extended by Public Resolution No. 10, approved March 1, 1937, and to Executive Order No. 6750, of June 27, 1934, public notice of intention to negotiate a trade agreement with the Government of the United Kingdom and with that Government on behalf of Newfoundland and the British Colonial Empire was issued on January 8, 1938.[1] In connection with that notice, the Secretary of State published a list of products on which the United States will consider the granting of concessions to the United Kingdom, Newfoundland, and the British Colonial Empire, and announced that concessions on products not included in the list would not be considered unless supplementary announcement were made.

The Secretary of State now announces that the products described below have been added to the list issued on January 8, 1938.

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[1] 3 F. R. 63 (DI).

As stated in the announcement of the previous list, only products listed will come under consideration for the possible granting of concessions by the United States. In the case of products ultimately included in the agreement, the existing import duty may be reduced or may simply be bound, without reduction. Moreover, concessions ultimately granted may not apply to all commodities covered by the phraseology of a given description, but may, especially in cases of broad descriptions, be limited to certain specific commodities or groups of commodities of particular interest to the United Kingdom, Newfoundland, or the British Colonial Empire falling within the scope of such phraseology. No further reduction will, of course, be made in any import duty which has already been reduced by 50 percent under the authority of the Trade Agreements Act.

The Committee for Reciprocity Information has prescribed that all information and views in writing and all applications for supplemental oral presentation of views relating to products included in this supplementary list shall be submitted to it not later than 12 noon, February 26, 1938. They should be addressed to "Chairman, Committee for Reciprocity Information, Old Land Office Building, 8th and E Streets, Northwest, Washington, D. C." Supplemental oral statements will be heard at a public hearing beginning at 10 a. m. on March 14, 1938, before the Committee for Reciprocity Information, in the hearing room of the Tariff Commission in the Old Land Office Building. Suggestions with regard to the form and content of presentations addressed to the Committee for Reciprocity Information are included in a statement released by that Committee on December 13, 1937.

United States Tariff Act of 1930

Paragraph	Description of article	Present rate of duty
24	Dried pawpaw juice or crude papain, natural and uncompounded, not edible, and not specially provided for.	10%
38	Sumac extract, not specially provided for, and combinations and mixtures of such extract with myrobalan or mangrove extract, or both, not containing alcohol.	15%.
52	Shark-liver oil, not specially provided for	20%.
81	Sodium chloride or salt, in bulk	7¢ per 100 lbs.
207	Fluorspar containing more than 97 per centum of calcium fluoride.	$5.60 per ton.
212	Chins, porcelain, and other vitrified wares, including chemical porcelain ware and chemical stoneware, composed of a vitrified nonabsorbent body which when broken shows a vitrified or vitreous, or semivitrified or semivitreous fracture, and all bisque and parian wares, including clock cases with or without movements, plaques, pill tiles, ornaments, charms, vases, statues, statuettes, mugs, cups, steins, lamps, and all other articles composed wholly or in chief value of such ware:	
	Plain white, not painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware, not specially provided for.	60%.
	Painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware, not specially provided for.	70%.
	In addition to the foregoing there shall be paid on all tableware, kitchenware, and table and kitchen utensils.	10¢ per doz. separate pieces.
223 (a)	Spectrographs, spectrometers, spectroscopes, refractometers, saccharimeters, colorimeters, prism-binoculars, cathetometers, interferometers, haemacytometers, polarimeters, polariscopes, photometers, ophthalmoscopes, slit lamps, corneal microscopes, optical measuring or optical testing instruments, testing or recording instruments or ophthalmological purposes, frames and mountings therefor, and parts of any of the foregoing; all the foregoing, finished or unfinished.	45% or 60%.
304	Hollow bars and hollow drill steel:	
	Valued above 4 cents and not above 8 cents per pound.	20% plus ¾¢ per lb.
	Valued above 8 cents and not above 12 cents per pound.	2½¢ plus ¾¢ per lb.
	Valued above 12 cents and not above 16 cents per pound.	3½¢ plus 3¼¢ per lb.
	Valued above 16 cents per pound	20% plus ¾¢ per lb.
346	Belt buckles, trouser buckles, and waistcoat buckles, shoe or slipper buckles, and parts thereof, made wholly or partly of iron, steel, or other base metal, valued at more than 20 and not more than 50 cents per hundred.	10¢ per 100 and 20%.

United States Tariff Act of 1930—Continued

Paragraph	Description of article	Present rate of duty
359	Dental hypodermic needles, wholly or in part of iron, steel, copper, brass, nickle, aluminum, or other metal, finished or unfinished.	35%.
370	Internal combustion motor-boat engines and parts thereof.	30%.
372	Combination candy-cutting and wrapping machines, finished or unfinished, not specially provided for, and parts thereof, not specially provided for, wholly or in chief value of metal or porcelain.	27½%.
372	Machine tools; parts thereof, not specially provided for, wholly or in chief value of metal or porcelain.	30%.
301	Lead-bearing ores, flue dust, and mattes of all kinds	1½¢ per lb. on the lead content.
397	Articles or wares not specially provided for, composed wholly or in chief value of iron, steel, or other base metal, but not plated with platinum, gold, or silver, or colored with gold lacquer, whether partly or wholly manufactured: Tricycles; baby carriage fittings; styluses; golf club heads; builders' hardware, including wrought steel butts, hinges, door bolts, hasps and staples, corner braces, steel handles, shelf brackets, and corrugated joint fasteners.	45%.
705	Extract of meat, including fluid	15¢ per lb.
718 (b)	Herring, prepared or preserved in any manner, including sardines, when packed in air-tight containers weighing with their contents not more than 15 pounds each (except fish packed in oil or in oil and other substances).	25%.
736	Berries, edible, in their natural condition or in brine (not including strawberries).	1¼¢ per lb.
747	Pineapples not in bulk	35¢ per crate of 2.45 cubic ft.
909	Pile fabrics, cut or uncut, whether or not the pile covers the entire surface, wholly or in chief value of cotton:	
	Corduroys, 52 inches or more in width and valued at 50 cents or more per square yard.	50%.
	Plushes and chenilles, 52 inches or more in width and valued at $1 or more per square yard.	50%.
	Terry-woven fabrics, valued at 25 cents or more per square yard.	40%.
	Terry-woven towels, whether or not the pile covers the entire surface, wholly or in chief value of cotton, finished or unfinished, valued at 45 cents or more each.	40%.
923	All manufactures, wholly or in chief value of cotton, not specially provided for.	40%.
1003	Jute yarns or roving, single:	
	Coarser in size than twenty-pound	2½¢ per lb.
	Twenty-pound up to but not including ten-pound	4¢ per lb.
	Ten-pound up to but not including five-pound	5½¢ per lb.
	Five-pound and finer	7¢ per lb., but not more than 40%.
1110	Pile fabrics, whether or not the pile covers the entire surface, wholly or in chief value of wool, and all articles, finished or unfinished, made or cut from such pile fabrics:	
	If the pile is wholly cut or wholly uncut	44¢ per lb. and 50%.
	If the pile is partly cut	44¢ per lb. and 55%.
1111	Blankets, and similar articles (including carriage and automobile robes and steamer rugs), made of blanketing, as units or in the piece, finished or unfinished, wholly or in chief value of wool, exceeding 3 yards in length.	Subject to duty as woven fabrics of wool weighing more than four ounces per sq. yd.
1113	Fabrics, with hat edges, not exceeding twelve inches in width, and articles made therefrom; tubings, garters, suspenders, braces, cords, and cords and tassels; all the foregoing, wholly or in chief value of wool.	50¢ per lb. and 50%.
1114 (b)	Gloves and mittens, finished or unfinished, wholly or in chief value of wool, valued at more than $1.75 per dozen pairs.	50¢ per lb. and 50%.
1115 (a)	Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool (except bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, not blocked or trimmed):	
	Valued at not more than $4 per pound	33¢ per lb. and 45%.
	Valued at more than $4 per pound	50¢ per lb. and 50%.
1115 (b)	Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, if blocked or trimmed (including finished hats, bonnets, caps, berets, and similar articles).	40¢ per lb. and 35% and in addition 12½¢ per article.
117 (a)	Axminster carpets, rugs, and mats, not specially provided for; Wilton carpets, rugs, and mats; Brussels carpets, rugs, and mats; velvet or tapestry carpets, rugs, and mats; and carpets, rugs, and mats, of like character or description; if valued at more than 40 cents per square foot.	60%.
1117 (c)	Floor coverings, including mats and druggets, wholly or in chief value of hair of the Angora goat, not specially provided for:	
	Valued at not more than 40 cents per square foot	30%.
	Valued at more than 40 cents per square foot	60%.
1207	Garters, suspenders, and braces, wholly or in chief value of silk or of silk and India rubber, and not specially provided for, whether or not Jacquard-figured.	45%.
1407 (a)	Handmade paper, and paper commonly or commercially known as handmade or machine handmade paper, all the above weighing 8 pounds or over per ream.	2¢ per lb. and 10%

United States Tariff Act of 1930—Continued

Paragraph	Description of article	Present rate of duty
1408	Paper envelopes, filled or unfilled, whether the contents are dutiable or free, not specially provided for.	The same rate of duty as the paper from which made and in addition thereto.
	If plain	5%.
	If bordered, embossed, printed, tinted, decorated, or lined.	10%.
	If lithographed	30%.
1409	Blotting paper	30%.
1502	All clubs, rackets, bats, golf tees, and other equipment, such as is ordinarily used in conjunction with balls primarily designed for use in physical exercise (whether or not such exercise involves the element of sport), not specially provided for.	15% or 30%.
1510	Buttons made in imitation of or similar to pearl, shell, or agate buttons (except buttons commonly known as Roman pearl and fancy buttons with a fish-scale or similar to fish-scale finish).	1½¢ per line per gross and 25%.
1513	Toy bricks and toy building blocks not specially provided for.	70%.
1530 (c)	Leather (except leather provided for in subparagraph (d) of paragraph 1530 of the Tariff Act of 1930), in the rough, in the white, crust, or russet, partly finished, or finished:	
	If made from reptile, shark, goat, or kid skins, and not imported to be used in the manufacture of boots, shoes, or footwear, or cut or wholly or partly manufactured into uppers, vamps, or any forms or shapes suitable for conversion into boots, shoes, or footwear.	25%.
	If made from sheep or lamb skins: Imported to be used in the manufacture of boots, shoes, or footwear, or cut or wholly or partly manufactured into uppers, vamps, or any forms or shapes suitable for conversion into boots, shoes, or footwear.	10%.
	Other, not including chamois	25%.
1535	Fishing rods and reels, and parts thereof, finished or unfinished, not specially provided for.	55%.
1537(b)	Bicycle tires composed wholly or in chief value of rubber.	10%.
1539(b)	Laminated products (whether or not provided for elsewhere in the Tariff Act of 1930) of which any synthetic resin or resin-like substance is the chief binding agent:	
	In sheets or plates	15¢ per lb. and 25%.
	In rods, tubes, blocks, strips, blanks, or other forms	50¢ per lb. and 40%.
	Manufactures wholly or in chief value of any of the foregoing, or of any other product of which any synthetic resin or resin-like substance is the chief binding agent.	50¢ per lb. and 40%.
1540	Carragheen or Irish moss, if manufactured or dyed	10%.
1555	Waste, not specifilly provided for	10%.
1669	Patchouli leaves and shark livers, which are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to proper packing and the prevention of decay or deterioration pending manufacture, and not containing alcohol.	Free.
1722	Derris root, and tuba or tube root, crude or unmanufactured, not specially provided for.	Free.
1727	Copra	Free.
1811	Works of art (except rugs and carpets made after the year 1700), collections in illustration of the progress of the arts, works in bronze, marble, terra cotta, parian, pottery, or porcelain, artistic antiquities, and objects of art of ornamental character or educational value which shall have been produced prior to the year 1830, but the free importation of such objects shall be subject to such regulations as to proof of antiquity as the Secretary of the Treasury may prescribe. Violins, violas, violoncellos, and double basses, of all sizes, made in the year 1800 or prior year.	Free.

Revenue Act of 1932, as Amended

Section	Description of article	Present rate of duty
601 (c) (4) and 630.	Crude petroleum, fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum; lubricating oil and gasoline or other motor fuel; and paraffin and other petroleum wax products; any of the foregoing sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, or vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions.	Exempt from taxes imposed in Sec. 601 (c) (4) of the Revenue Act of 1932, as amended.

NOTE.—The "present" rates of duty shown in the foregoing list and in the initial list of January 8, 1938, are, with a few exceptions, those now applicable to products of the United Kingdom, Newfoundland, and the British Colonial Empire. In a few instances where the description is broad, the rates shown do not include certain rates resulting from changes made under the authority of Sections 336 or 350 of the Tariff Act of 1930, as amended. In such instances, the rates not shown are applicable to only a part of the products covered by the description.

In all instances, however, in the above list and in the list of January 8, 1938, the descriptions of articles as given in the lists are alone controlling in determining whether specific products are or are not included. The references to paragraphs of the Tariff Act of 1930, to sections of the Revenue Acts of 1932 and 1934, as amended, and to rates of duty or tax are given only for convenience of reference and do not qualify in any way the descriptions of articles.

In the event that articles which are at present regarded as classifiable under the descriptions included in the above list are excluded therefrom by judicial decision or otherwise prior to the conclusion of the agreement, the list will nevertheless be considered as including such articles.

[F. R. Doc. 38-315; Filed, January 29, 1938; 12:32 p. m.]

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commission.

[Order No. 202]

AN ORDER MODIFYING ORDER NO. 83 AND RECLASSIFYING COALS IN CERTAIN SIZE GROUPS OF THE CAPITO MINE OF THE ATLAS COAL COMPANY, A CODE MEMBER WITHIN DISTRICT NO. 8

Pursuant to Act of Congress entitled "An Act to regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bitminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the classifications of coals as set opposite the name of the Atlas Coal Company of its Capito Mine, as the same appear in the Schedule of Initial Classifications of Coals of Code Members within District No. 8, filed on the 26th day of November, 1937, in the office of the Secretary of the Commission and made part of Order No. 83[1] by reference as though fully set forth therein, be and the same are hereby reclassified from "H" to "J" in size group 6, and from "E" to "H" in size groups 11, 12, 13 and 14, and said reclassifications shall become effective at 12:01 o'clock A. M. on the 31st day of January, 1938.

2. That except as herein modified, the Schedule of Initial Classifications of Coals of Code Members within District No. 8, as established by Order No. 83, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this order to the Consumers' Counsel, to the Secretary of Bituminous Coal Producers' Board for District No. 8, and to code members within said district; and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 27th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary*.

[F. R. Doc. 38-312; Filed, January 28, 1938; 2:54 p. m.]

[Order No. 203]

AN ORDER MODIFYING ORDER NO. 96, AS MODIFIED BY ORDERS NOS. 132, 164, 184 AND 191, AND REVISING THE PRICE INDEX OF COALS IN CERTAIN SIZE GROUPS PRODUCED WITHIN DISTRICT NO. 8 AT THE CAPITO MINE OF THE ATLAS COAL COMPANY

The National Bituminous Coal Commission having by its Order No. 96, as modified by Orders Nos. 132, 164, 184 and 191,[2] determined and established the minimum price of coals

[1] 2 F. R. 2970 (DI).

[2] 2 F. R. 3040, 3281, 3388 (DI); 3 F. R. 101, 140 (DI).

of code members produced within District No. 8, as set forth in Price Schedule No. 1—District No. 8 and Supplements Nos. 1, 2, 3 and 4 to Price Schedule No. 1—District No. 8, and having by its Order No. 202 reclassified the coals in certain size groups of the Capito Mine of the Atlas Coal Company, and in order to reflect the said reclassification in the Schedule of Minimum Prices for coals of the Capito Mine of the Atlas Coal Company:

Now, therefore, pursuant to Act of Congress entitled "An Act to regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Price Index, as set forth on page 21 S–1 of Supplement No. 1 to the Schedule of Minimum Prices of coals of code members produced within District No. 8 of the Capito Mine of the Atlas Coal Company in the "lower hignite" seam, be changed from "H" to "J" in size group 6, and from "E" to "H" in size groups 11, 12, 13 and 14, the said changes in the Price Index to become effective at 12:01 o'clock A. M. on the 31st day of January, 1938.

2. That the said Orders Nos. 96, 132, 164, 184 and 191 and Price Schedule No. 1—District No. 8 and Supplements Nos. 1, 2, 3 and 4 thereto, except as modified herein, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this order to the Consumers' Counsel, to the Secretaries of Bituminous Coal Producers Boards and to code members within District No. 8; shall cause copies of this order to be made available for insepction at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the FEDERAL REGISTER.

By order of the Commission.

Dated this 27th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-313; Filed, January 28, 1938; 2:54 p. m.]

[Order No. 204]

AN ORDER PROVIDING FOR A HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE RELATING TO THE COMMISSION'S MOTION TO REVIEW AND REVISE MINIMUM PRICES AND MARKETING RULES AND REGULATIONS RELATING TO SALES OF RAILROAD LOCOMOTIVE FUEL, FIXING THE TIME AND PLACE OF SUCH HEARING AND PRESCRIBING THE GIVING OF NOTICE THEREOF

Pursuant to act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission pursuant to Section 4–II–(b) of the Act, upon its own motion proposes to review and consider a revision of the present established minimum prices and Marketing Rules and Regulations applying to sales of coal for railroad locomotive fuel, as contained in the schedules of minimum prices now in effect and applying to coals of code members produced within the several districts, the modification of such minimum prices and Marketing Rules and Regulations which will be considered by the Commission being set forth in the following proposal:

That minimum prices established for application to sales of railroad locomotive fuel and based upon a value in use for that purpose be rescinded; and all sales and offers for sale of coal for railroad purposes be made at not less than the minimum prices established by the Commission for general application in the market area in which is located the mine from which shipment is made, subject, however, to the following limitations and conditions:

(*a*) No discount, commission or other allowance or deduction from minimum prices shall be paid or allowed to any sales agent, registered wholesaler or other purchaser of railroad fuel.

(*b*) No substitution may be made upon any order or contract for railroad fuel, of a grade or size of coal taking a minimum price higher than the price stipulated in the order or contract; that is to say, that in every case of sale and purchase of railroad fuel, the seller shall charge and the purchaser shall pay not less than the minimum price established for the grade and size of coal actually delivered.

(*c*) No distinction or difference as to minimum price for railroad fuel shall be made between sales of coal to "on-line" railroads and to "off-line" railroads.

(*d*) Where coal sold for railroad fuel purposes is crushed before delivery (excluding any case where crushing of coal is regularly done preliminary to any cleaning process) the minimum price for such crushed coal shall be the price established for the grade and size of coal before crushing, plus a charge of not less than five cents a ton for crushing.

(*e*) No reduction shall be made in any minimum price applying to sales of railroad fuel by reason of any difference in cost of transportation from the mine to the point of distribution or consumption in the case of "on-line" railroads, or in the case of "off-line" railroads, because of any difference in the amount of freight charges paid on such coal by the "off-line" railroad as between competing mines and districts.

Now, therefore, the Commission hereby orders and directs:

1. That a hearing be held on the 14th day of February, 1938, commencing at the hour of 10 o'clock A. M., in the Hearing Room in the Walker Building, Washington, D. C., at which time all interested parties may submit evidence relating to the proposed revision of railroad fuel prices and Marketing Rules and Regulations, as said proposal is set forth herein.

2. Notice of the time, place and purpose of hearing to be held under this order shall be given by the Secretary of the Commission by causing to be published a copy of this order in a newspaper of general circulation in Districts Nos. 1 to 20, inclusive, and Nos. 22 and 23 and by mailing a copy of this order to the Secretary of each of said District Boards and to all code members in the respective districts and to the Consumers' Counsel and shall cause to be published a copy of this Order in the FEDERAL REGISTER.

3. The hearing provided to be held under Order No. 122 [1] of the Commission and now adjourned to the 7th day of February, 1938, is hereby directed to be further adjourned and to be consolidated with the hearing to be held on the 14th day of February, 1938, as herein provided.

4. The proposal hereinbefore contained is not to be construed as an order of this Commission but merely a proposal under consideration and does not permit sales of railway fuel to be presently made at the prices and on the terms and conditions set forth in said proposal. Railroad locomotive fuel prices and Marketing Rules and Regulations heretofore in effect shall continue until further order of the Commission.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-319; Filed, January 29, 1938; 12:38 p. m.]

[Order No. 205]

AN ORDER PROVIDING FOR A HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE TO ENABLE THE COMMISSION TO PRESCRIBE DUE AND REASONABLE MAXIMUM DISCOUNTS OR PRICE ALLOWANCES THAT MAY BE MADE BY CODE MEMBERS TO PERSONS (WHETHER OR NOT CODE MEMBERS), HEREIN REFERRED TO AS DISTRIBUTORS, WHO PURCHASE COAL FOR RESALE AND RESELL IT IN NOT LESS THAN CARGO AND RAILROAD CARGO LOTS, AND TO CONSIDER A PROPOSAL OF THE COMMISSION RELATING TO SUCH DISCOUNTS AND ALLOWANCES

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other

[1] 2 F. R. 3238 (DI).

purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, and particularly pursuant to Section 4–II (h), the National Bituminous Coal Commission upon its own motion, in order to enable it to prescribe due and reasonable maximum discounts or price allowances that may be made by code members to persons (whether or not code members), sometimes referred to as distributors, who purchase coal for resale and resell it in not less than cargo or railroad cargo lots, now offers for consideration the following proposal with respect to such discounts or allowances:

"That in all cases of sales of coal to or through distributors (whether registered Wholesalers, registered Farmers' Cooperative Organizations or sales agents), the deduction to be allowed or paid by a code member in any transaction of sale shall not exceed eight (8) percentum of the minimum price established by the Commission for the grade and size of coal sold f. o. b. transportation facilities at the mine; provided, that nothing contained herein shall prevent the division of any such allowance between sales agents or registered Wholesalers and Farmers' Cooperative Organizations in proportion to the value of the service actually rendered by each in the transaction of sale."

Now, therefore, it is hereby ordered and directed:

1. That a hearing be held on the 16th day of February, 1938, commencing at the hour of 10:00 A. M. in the Hearing Room of the Commission in the Walker Building, Washington, D. C., at which time all interested parties may submit evidence relating to the proposal of the Commission as set forth herein.

2. Notice of the time, place and purpose of the hearing to be held under this order shall be given by the Secretary of the Commission by causing to be published a copy of this order in the FEDERAL REGISTER and in a newspaper of general circulation in each of the districts and by mailing a copy of this order to the Secretary of each of said District Boards and to all code members in the respective districts and to the Consumers' Counsel.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-320; Filed, January 29, 1938; 12:38 p. m.]

[Order No. 206]

AN ORDER SUSPENDING SECTION 6 OF THE MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COALS OF CODE MEMBERS WITHIN DISTRICTS NOS. 15, 16, 17, 18, 19, 20, 22 AND 23, RELATING TO CONTRACTS ON AND AFTER FEBRUARY 1, 1938, AND AMENDING MARKETING RULES AND REGULATIONS FOR THE AFORESAID DISTRICTS

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That effective as of the date of this order and until further order of the Commission, Section 6 of the marketing rules and regulations [1] incidental to the sale and distribution of coals of code members within Districts Nos. 15, 16, 17, 18, 19, 20, 22 and 23, authorizing the making of contracts on or after February 1, 1938, for a period in excess of thirty (30) days, is hereby suspended.

2. That said Marketing Rules and Regulations are amended and until further order of the Commission no code member or sales agent of a code member, and no wholesaler or farmers' cooperative organization, registered or proposing to register, shall enter into any agreement or order for the sale or delivery of coal for a period in excess of thirty (30) days from the date of such agreement or order, and no prices shall be less than the minimum prices in effect at the time of delivery; Provided, however, that contracts for periods not exceeding one (1) year at prices not less than the minimum prices established by the Coal Commission, in effect at the time of delivery, may be made with agencies of the Federal Government or with such agencies of State or local governments as are required by law to purchase coal for periods in excess of thirty (30) days. In the case of governmental agencies options may be given for a period not exceeding forty-five (45) days. No option for the sale of coal may be given, except as herein specifically provided.

3. That all quotations shall be made or confirmed in writing, and shall, without notice, become null and void immediately upon the establishment by the Coal Commission of a revised minimum price for the coal covered by the quotation.

4. That except as modified and amended by this order, the Marketing Rules and Regulations incidental to the sale and distribution of coals of code members within Districts Nos. 15, 16, 17, 18, 19, 20, 22 and 23, shall remain in full force and effect.

5. That the Secretary of the Commission shall forthwith mail copies of this order to the secretaries of all District Boards, and to all code members within Districts Nos. 15, 16, 17, 18, 19, 20, 22 and 23; to the Consumers' Counsel and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-321; Filed, January 29, 1938; 12:38 p. m.]

[Order No. 207]

AN ORDER MODIFYING ORDER NO. 90, AS MODIFIED BY ORDERS NOS. 138, 149, 160, 183, AND 188, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 2, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 6 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 2"

The National Bituminous Coal Commission having by its Order No. 90, as modified by Orders Nos. 138, 149, 160, 183, and 188 [1] determined and established the Minimum Prices of Coals of Code Members produced within District No. 2, as set forth in "Price Schedule No. 1—District No. 2," as supplemented by "Supplements No. 1, No. 2, No. 3, No. 4, and No. 5," and having determined that the provisions of subsections (a) and (b) of Part II of Section 4 of the Act and the purposes thereof will be carried out more effectively by supplementing the aforesaid Schedule and Supplements by a further Supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to Regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Minimum Prices of Coals of Code Members produced within District No. 2, established in "Price Schedule No. 1—District No. 2," as supplemented by "Supplements No. 1, No. 2, No. 3, No. 4 and No. 5 to Price Schedule No. 1—District No. 2," are hereby further supplemented as set forth in "Supplement No. 6 to Price Schedule No. 1—District No. 2," filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices, as shown in said Supplement No. 6, shall be and hereby are determined and established as the Minimum Prices of Coals of Code Members within District No. 2, and shall be effective at 12:01 o'clock A. M., on the 7th day of February, 1938.

2. That said Order No. 90, as modified by Orders Nos. 138, 149, 160, 183 and 188, and as modified herein and by Supplement No. 6 to Price Schedule No. 1—District No. 2, shall remain in full force and effect.

[1] 2 F. R. 3324 (DI); 3 F. R. 88 (DI).

[1] 2 F. R. 3010, 3272, 3376, 3384 (DI); 3 F. R. 100, 138 (DI).

3. That the Secretary of the Commission shall forthwith mail copies of this Order and "Supplement No. 6 to Price Schedule No. 1—District No. 2" to the Consumers' Counsel; the Secretaries of the Bituminous Coal Producers' Boards, to Code Members within District No. 2; shall cause copies of this Order and said Supplement No. 6 to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the FEDERAL REGISTER.

By order of the Commission.

Dated this 27th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

SUPPLEMENT NO. 6 TO PRICE SCHEDULE NO. 1, DISTRICT NO. 2

To All Code Members Within District No. 2:

Effective February 7, 1938, the following changes in Price Schedule No. 1 and Supplement No. 1, thereto, shall be made:

The following Truck Mines should be included and coal shipped via rail from these mines shall be price indexed as follows:

SIZE GROUPS

	1	2	3	4	5	6	7	9	12	13	14
Wilson Refractories, Inc., Red Hill Mine	E	E	E	E	E	E	D	D	D	D	D
John W. Byars, Jane Mine	D	D	D	D	D	D	D	D	E	E	E
Gilleland Coke Co., Leon Mine	D	D	D	D	D	D	D	D	E	E	E
King Bros. Coal & Coke Co., Marguerite Mine	D	D	D	D	D	D	D	D	E	E	E
Shamrock Coal & Coke Co., Shamrock Mine	C	C	C	C	C	C	C	C	D	D	D
Charles E. Campbell, Mohawk Mine	F	F	F	F	F	F	F	E	F	F	F
Gene Stickel, Russell Mine	F	F	F	F	F	F	F	E	F	F	F
Armstrong Bros. Coal Co., Yukon Mine	C	C	C	C	C	C	C	D	C	C	C

By Order of the Commission.

Dated this 27th day of January, 1938.

F. W. MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-339; Filed, January 31, 1938; 11:21 a. m.]

[Order No. 208]

AN ORDER MODIFYING ORDER NO. 98, AS MODIFIED BY ORDERS NOS. 133 AND 153, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 10, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES TO BE KNOWN AS "SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 10"

The National Bituminous Coal Commission having by its Order No. 98, as modified by Orders Nos. 133 and 153,[1] determined and established the minimum prices of coals of code members produced within District No. 10, as set forth in "Price Schedule No. 1—District No. 10," and "Supplements No. 1 and No. 2 to Price Schedule No. 1—District No. 10," and having determined that the provisions of subsections (a) and (b) of Part II of Section 4 of the Act and the purposes thereof will be carried out more effectively by supplementing the aforesaid price schedule and supplements by a further supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the minimum prices of coals of code members produced within District No. 10, established in "Price Schedule No. 1—District No. 10", as supplemented by "Supplements No. 1 and No. 2 to Price Schedule No. 1—District No. 10", are hereby further supplemented as set forth in "Supplement No. 3 to Price Schedule No. 1—District No. 10", filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices, as shown in said Supplement No. 3, shall be and hereby are determined and established as the minimum prices of coals of code members within said District No. 10, and shall be effective at 12:01 o'clock A. M., on the 7th day of February, 1938.

2. That said Order No. 98, as modified by Orders Nos. 133 and 153, and as modified herein, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this order and Supplement No. 3 to Price Schedule No. 1—District No. 10 to the Consumers' Counsel; the Secretaries of the Bituminous Coal Producers' Boards for the Districts; to code members within District No. 10; shall cause copies of this order and said Supplement No. 3 to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all statistical bureaus of the Commission; and shall cause to be published a copy of this order in the FEDERAL REGISTER.

By order of the Commission.

Dated this 27th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1, DISTRICT NO. 10

To All Code Members Within District No. 10:

Effective February 7, 1938, the following price instruction shall be inserted in Supplement No. 1 to Price Schedule No. 1:

"The f. o. b. mine prices on shipments of coal from mines in Mine Price Group "A" from which the freight rate to Afton, Clinton Junction, Janesville, Riton, and Tiffany, all in Wisconsin, is more than $2.55 per net ton, may be decreased in the amount in cents per net ton (not in excess of 35¢ per net ton) sufficient to equalize the prices delivered at destination with delivered price on shipments from those mines in Mine Price Group "A" on which a freight rate of $2.55 applies to these destinations."

By Order of the Commission.

Dated this 27th day of January, 1938.

F. W. MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-340; Filed, January 31, 1938; 11:21 a. m.]

[Order No. 209]

AN ORDER MODIFYING AND AMENDING PARAGRAPH I OF SECTION III, PARAGRAPH I OF SECTION IV AND PARAGRAPHS 2 AND 3 OF SECTION V OF THE MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COALS OF CODE MEMBERS WITHIN DISTRICTS NOS. 1 TO 20 INCLUSIVE AND DISTRICTS NOS. 22 AND 23, RELATING TO THE PAYMENT OR ALLOWANCE OF DISCOUNTS TO WHOLESALERS AND FARMERS' COOPERATIVE ORGANIZATIONS ON AND AFTER FEBRUARY 1, 1938

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That effective February 1, 1938, and continuing until further order of the Commission, paragraph I of Section III, paragraph I of Section IV, and Paragraphs 2 and 3 of Section V of the Marketing Rules and Regulations established by the Commission incidental to the sale and distribution of coals of code members within Districts Nos. 1 to 20 inclusive and Districts Nos. 22 and 23,[1] are hereby modified to the extent necessary to give effect to the following regulation:

A Wholesaler or Farmers' Cooperative Organization which has filed an application for registration with the Coal Commission on or before January 31, 1938, in the manner provided in Sections III and IV of the Marketing Rules and

[1] 2 F. R. 3056, 3260, 3379 (DI).

[1] 2 F. R. 2978, 3232, 3324 (DI); 3 F. R. 88 (DI).

Regulations shall, pending formal approval or denial of such application by the Coal Commission, be entitled to receive discounts upon the same conditions and to the same extent as if the application for such registration had been formally granted.

In the case of a Wholesaler or Farmers' Cooperative Organization which files an application for registration on or after February 1, 1938, such applicant shall be entitled to receive such discounts only upon the granting of said application and formal registration of the applicant by the Coal Commission.

2. That except as modified and amended by this order, the Marketing Rules and Regulations incidental to the sale and distribution of coals of code members within Districts Nos. 1 to 20 inclusive and Districts Nos. 22 and 23, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this order to the Secretaries of all District Boards, and to all code members within Districts Nos. 1 to 20 inclusive and Districts Nos. 22 and 23; to all applicants for registration as registered wholesalers or farmers' cooperative organizations; to the Consumers' Counsel; and shall cause a copy of this order to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-341; Filed, January 31, 1938; 11:21 a. m.]

[Docket No. 2-FD]

IN THE MATTER OF THE APPLICATION OF ALABAMA COALS, INCORPORATED

ORDER

The Commission having on the 22d day of September, 1937,[1] granted the application of Alabama Coals, Incorporated, for provisional approval as a marketing agency and by further order dated the 9th day of December, 1937,[2] having further continued such provisional approval to and until the 30th day of January, 1938, and the Commission having in the meantime under its Order No. 123[3] conducted hearings for the purpose of receiving evidence to enable the Commission to establish permanent rules and regulations governing the organization and operation of marketing agencies under Section 12 of the Act and such permanent regulations not having yet been established.

Now, therefore, pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

That the provisional approval of Alabama Coals, Incorported, as a marketing agency, be and the same is hereby extended to continue in force until further order of this Commission.

The Secretary of the Commission shall forthwith mail a copy of this order to the petitioner.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-316; Filed, January 29, 1938; 12:37 p. m.]

[Docket No. 3-FD]

IN THE MATTER OF THE APPLICATION OF APPALACHIAN COALS, INCORPORATED

ORDER

The Commission having on the 22d day of September, 1937,[1] granted the application of Appalachian Coals, Incorporated, for provisional approval as a marketing agency and by further order dated the 9th day of December 1937,[2] having further continued such provisional approval to and until the 30th day of January, 1938, and the Commission having in the meantime under its Order No. 123[3] conducted hearings for the purpose of receiving evidence to enable the Commission to establish permanent rules and regulations governing the organization and operation of marketing agencies under Section 12 of the Act and such permanent regulations not having yet been established.

Now, therefore, pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

That the provisional approval of Appalachian Coals, Incorporated, as a marketing agency, be and the same is hereby extended to continue in force until further order of this Commission.

The Secretary of the Commission shall forthwith mail a copy of this order to the petitioner.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-318; Filed, January 29, 1938; 12:37 p. m.]

[Docket No. 4-FD]

IN THE MATTER OF THE APPLICATION OF SMOKELESS COAL CORPORATION

ORDER

The Commission having on the 22d day of September, 1937,[4] granted the application of Smokeless Coal Corporation, for provisional approval as a marketing agency and by further order dated the 9th day of December, 1937,[4] having further continued such provisional approval to and until the 30th day of January, 1938, and the Commission having in the meantime under its Order No. 123[3] conducted hearings for the purpose of receiving evidence to enable the Commission to establish permanent rules and regulations governing the organization and operation of marketing agencies under Section 12 of the Act and such permanent regulations not having yet been established.

Now, therefore, pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

That the provisional approval of Smokeless Coal Corporation, as a marketing agency, be and the same is hereby extended to continue in force until further order of this Commission.

The Secretary of the Commission shall forthwith mail a copy of this order to the petitioner.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-317; Filed, January 29, 1938; 12:37 p. m.]

[Docket No. 65-FD]

INVESTIGATION OF THE NATURE AND EXTENT OF TRANSACTIONS IN INTRASTATE COMMERCE IN BITUMINOUS COAL IN THE STATE OF VIRGINIA AND THE EFFECT OF SUCH TRANSACTIONS ON INTERSTATE COMMERCE IN SUCH COAL

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 27th day of January, 1938.

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[1] 2 F. R. 2286 (DI).
[2] 2 F. R. 3294 (DI).
[3] 2 F. R. 3239 (DI).
[4] 2 F. R. 2287 (DI).

It appearing, That by Orders Nos. 2 and 50,[1] the Commission upon its own motion entered into and conducted an investigation under the provisions of Section 4–A of the Bituminous Coal Act of 1937, for the purpose of determining the nature and extent of transactions in intrastate commerce in bituminous coal in the State of Virginia and the effect of such transactions upon interstate commerce in such coal; and

It further appearing, That reasonable public notice of a hearing was provided and that at said hearing interested parties were afforded an opportunity to be heard; that the presiding Examiner duly designated by the Commission having filed his report and recommendations and the Commission having given due consideration to said report and recommendations and to the record of the evidence in this proceeding; and, the Commission having on the 27th day of January, 1938, adopted the Examiner's report and recommendations as its own which said report is hereby referred to and made a part hereof;

Now, therefore, It is by order declared:

That substantially all transactions in bituminous coal in intrastate commerce in the State of Virginia directly affect interstate commerce in such coal; and

That there will be an undue or unreasonable advantage, preference or prejudice as between localities in Virginia in such intrastate commerce on the one hand and interstate commerce in bituminous coal on the other hand, and an undue, unreasonable, or unjust discrimination against interstate commerce in such coal if such transactions in intrastate commerce or any substantial part thereof are not regulated and subjected to the provisions of Section 4 of the Bituminous Coal Act of 1937.

Therefore, it is further ordered:

1. That on and after the 15th day of February, 1938, all bituminous coal sold, delivered or offered for sale in transactions in intrastate commerce in such coal in all localities within the State of Virginia, shall be subject to the provisions of Section 4 of the Bituminous Coal Act of 1937, to the Bituminous Coal Code, as promulgated by the Commission and made effective on the 21st day of June, 1937, and to all relevant orders of the Commission in effect on the date of this order, as well as all further orders which may thereafter be issued by the Commission under Section 4 of said Act, so as to apply to such intrastate commerce in coal within the State of Virginia.

2. That any producer of bituminous coal in intrastate commerce within the State of Virginia, who may believe that his or its particular transactions in intrastate commerce in bituminous coal should be exempted from this order and/or from the provisions of Section 4 and 4–A of said Bituminous Coal Act of 1937, may file application at any time hereafter for exemption pursuant to the second paragraph of Section 4–A of said Act, and be entitled to a hearing and appropriate orders thereon.

3. That the Secretary of the Commission shall give notice to each known producer of bituminous coal within the State of Virginia who is not upon the date of this Order a member of the Bituminous Coal Code, by mailing, within five (5) days from this date, a copy of this Order, together with three (3) copies of the Form of Code Acceptance and rules prescribed by the Commission for filing acceptances, and a copy of the Bituminous Coal Code as promulgated under date of June 21, 1937.

The Secretary shall cause a copy of this Order to be published in the FEDERAL REGISTER, and shall also publish a copy thereof in a newspaper of general circulation in each county within the State of Virginia known to produce bituminous coal, publication thereof to be made three (3) times within fourteen (14) days from the date of this Order.

By Order of the Commission.

Dated this 27th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary*.

[F. R. Doc. 38–322; Filed, January 29, 1938; 12:39 p. m.]

[1] 2 F. R. 1266, 2284 (DI).

[Docket No. 85–FD]

IN THE MATTER OF PETITION OF CONSUMERS' COUNSEL

ORDER AND NOTICE FOR HEARING

A petition having been filed with this Commission by Consumers' Counsel alleging dissatisfaction with coordination of minimum prices of coals produced in Districts Nos. 1 to 13, inclusive, as established by Commission Orders Nos. 89 to 101, inclusive,[1] as amended and revised by subsequent orders:

This matter having come on to be heard before the Commission on December 21, 1937, pursuant to notice, having been continued to January 4, 1938, and on January 4, 1938 having been continued subject to agreement of counsel and to further notice, the above entitled proceeding is assigned for hearing on February 8, 1938, at 10:00 o'clock A. M., at the Hearing Room of the Commission in Washington, D. C., at which time the Commission will introduce evidence pertaining to the establishment of minimum prices for coals of code members within the aforesaid Districts Nos. 1 to 13, inclusive.

A copy of the aforesaid petition, and amendments thereto, are on file and available for inspection by interested parties at the office of the Secretary of the Commission, at each of the Statistical Bureaus of the Commission and at the office of each District Board.

At said hearing the Commission will also present evidence pertaining to the establishment of minimum prices for coals of code members within Districts Nos. 14 to 20, inclusive and Districts Nos. 22 and 23.

At said hearing all interested parties shall be afforded an opportunity to be heard.

The Secretary of the Commission is directed, forthwith, to mail a copy of this order and notice to the Consumers' Counsel; to the Secretary of each District Board for Districts Nos. 1 to 20, inclusive and for Districts Nos. 22 and 23; and to each code member in said districts; and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission for the aforesaid districts, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary*.

[F. R. Doc. 38–333; Filed, January 31, 1938; 11:19 a. m.]

[Docket No. 283–FD]

IN THE MATTER OF THE PETITION OF THE CITY OF NEW YORK, STATE OF NEW YORK AND CONSUMERS' COUNSEL

ORDER AND NOTICE FOR HEARING

A petition having been filed, on January 26, 1938, in this Commission by the City of New York, State of New York and Consumers' Counsel alleging dissatisfaction with coordination of minimum prices of coals produced in Districts Nos. 1 to 13, inclusive, as established by Commission Orders Nos. 89 to 101, inclusive,[2] as amended and revised by subsequent Orders:

Now, therefore, it is ordered:

1. That the above entitled proceeding is assigned for hearing on February 8, 1938, at 10:00 o'clock A. M. at the hearing room of the Commission in Washington, D. C., at which time the Commission will introduce evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within the aforesaid Districts Nos. 1 to 13, inclusive.

2. A copy of the aforesaid petition is on file and available for inspection by interested parties at the office of the Secretary of the Commission, at each of the Statistical Bureaus of the Commission and at the office of each District Board.

[1] 2 F. R. 2992–3079 (DI).

[2] 2 F. R. 2992–3079 (DI).

3. At said hearing the Commission will also present evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within Districts Nos. 14 to 20, inclusive, and Districts Nos. 22 and 23.

4. At said hearing all interested parties shall be afforded an opportunity to be heard.

5. The Secretary of the Commission is directed forthwith to mail a copy of this Order and notice to the petitioners above named, to the Consumers' Counsel, to the Secretary of each District Board for Districts Nos. 1 to 20, inclusive, and for Districts Nos. 22 and 23; and to each code member in said Districts; and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission for the aforesaid Districts, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] W. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-334; Filed, January 31, 1938; 11:19 a. m.]

[Docket No. 284-FD]

IN THE MATTER OF THE PETITION OF NEW YORK CITY AND NEW YORK STATE

ORDER AND NOTICE FOR HEARING

A petition having been filed in this Commission on January 26, 1938, by New York City and New York State alleging dissatisfaction with coordination of minimum prices of coals produced in Districts Nos. 1 to 13, inclusive, as established by Commission Orders Nos. 89 to 101, inclusive,[1] as amended and revised by subsequent Orders:

Now, therefore, it is hereby ordered:

1. That the above entitled proceeding is assigned for hearing on February 8, 1938, at 10:00 o'clock A. M. at the hearing room of the Commission in Washington, D. C., at which time the Commission will introduce evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within the aforesaid Districts Nos. 1 to 13, inclusive.

2. A copy of the aforesaid petition is on file and available for inspection by interested parties at the office of the Secretary of the Commission, at each of the Statistical Bureaus of the Commission and at the office of each District Board.

3. At said hearing the Commission will also present evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within Districts Nos. 14 to 20, inclusive, and Districts Nos. 22 and 23.

4. At said hearing all interested parties shall be afforded an opportunity to be heard.

5. The Secretary of the Commission is directed forthwith to mail a copy of this Order and notice to the petitioners above named, to the Consumers' Counsel, to the Secretary of each District Board for Districts Nos. 1 to 20, inclusive, and for Districts Nos. 22 and 23; and to each code member in said Districts; and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission for the aforesaid Districts, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-335; Filed, January 31, 1938; 11:19 a. m.]

[Docket No. 290-FD]

IN THE MATTER OF THE PETITION OF THE CITY OF ATLANTA, GEORGIA

ORDER AND NOTICE FOR HEARING

A petition having been filed in this Commission on January 27, 1938, by The City of Atlanta, Georgia, alleging dissatisfaction with coordination of minimum prices of coals produced in Districts Nos. 1 to 13, inclusive, as established by Commission Orders Nos. 89 to 101, inclusive,[1] as amended and revised by subsequent Orders:

Now, therefore, it is hereby ordered:

1. That the above entitled proceeding is assigned for hearing on February 8, 1938, at 10:00 o'clock A. M. at the hearing room of the Commission in Washington, D. C., at which time the Commission will introduce evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within the aforesaid Districts Nos. 1 to 13, inclusive.

2. A copy of the aforesaid petition is on file and available for inspection by interested parties at the office of the Secretary of the Commission, at each of the Statistical Bureaus of the Commission and at the office of each District Board.

3. At said hearing the Commission will also present evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within Districts Nos. 14 to 20, inclusive, and Districts Nos. 22 and 23.

4. At said hearing all interested parties shall be afforded an opportunity to be heard.

5. The Secretary of the Commission is directed forthwith to mail a copy of this Order and Notice to the petitioners above named, to the Consumers' Counsel, to the Secretary of each District Board for Districts Nos. 1 to 20, inclusive, and for Districts Nos. 22 and 23; and to each code member in said Districts; and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission for the aforesaid Districts, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By Order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-336; Filed, January 31, 1938; 11:20 a. m.]

[Docket No. 291-FD]

IN THE MATTER OF THE PETITION OF THE CITY OF ST. LOUIS MO.

ORDER AND NOTICE FOR HEARING

A petition having been filed in this Commission on January 27, 1938, by The City of St. Louis, Mo., alleging dissatisfaction with coordination of minimum prices of coals produced in District No. 10, as established by Commission Order No. 98, as amended and revised by subsequent orders.[2]

Now, therefore, it is hereby ordered:

1. That the above entitled proceeding is assigned for hearing on February 8, 1938, at 10:00 o'clock A. M. at the hearing room of the Commission in Washington, D. C., at which time the Commission will introduce evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within the aforesaid District No. 10.

2. A copy of the aforesaid petition is on file and available for inspection by interested parties at the office of the Secretary of the Commission, at each of the Statistical Bureaus of the Commission and at the office of each District Board.

3. At said hearing the Commission will also present evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within Districts Nos. 1 to 20, inclusive, and Districts Nos. 22 and 23.

4. At said hearing all interested parties shall be afforded an opportunity to be heard.

5. The Secretary of the Commission is directed forthwith to mail a copy of this Order and notice to the petitioner above named, to the Consumers' Counsel, to the Secretary of each District Board for Districts Nos. 1 to 20, inclusive, and for Districts Nos. 22 and 23; and to each code member in said Districts; and shall cause a copy hereof to be filed

[1] 2 F. R. 2992-3079 (DI).

[1] 2 F. R. 2992-3079 (DI).

[2] 2 F. R. 3056, 3260, 3379 (DI).

and made available for inspection at each of the Statistical Bureaus of the Commission for the aforesaid Districts, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-337; Filed, January 31, 1938; 11:20 a. m.]

[Docket No. 292-FD]

IN THE MATTER OF THE PETITION OF THE CITY OF ROCHESTER, NEW YORK

ORDER AND NOTICE FOR HEARING

A petition having been filed in this Commission on January 27, 1938, by the City of Rochester, New York, alleging dissatisfaction with coordination of minimum prices of coals produced in Districts Nos. 1 to 13, inclusive, as established by Commission Orders Nos. 89 to 101, inclusive, as amended and revised by subsequent Orders: [1]

Now, therefore, it is hereby ordered:

1. That the above entitled proceeding is assigned for hearing on February 8, 1938, at 10:00 o'clock A. M. at the hearing room of the Commission in Washington, D. C., at which time the Commission will introduce evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within the aforesaid Districts Nos. 1 to 13, inclusive.

2. A copy of the aforesaid petition is on file and available for inspection by interested parties at the office of the Secretary of the Commission, at each of the Statistical Bureaus of the Commission and at the office of each District Board.

3. At said hearing the Commission will also present evidence pertaining to the establishment of Minimum Prices for Coals of Code Members within Districts Nos. 14 to 20, inclusive, and Districts Nos. 22 and 23.

4. At said hearing all interested parties shall be afforded an opportunity to be heard.

5. The Secretary of the Commission is directed forthwith to mail a copy of this Order and notice to the petitioners above named, to the Consumers' Counsel, to the Secretary of each District Board for Districts Nos. 1 to 20, inclusive, and for Districts Nos. 22 and 23; and to each code member in said Districts; and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission for the aforesaid Districts, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of January, 1938.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 38-338; Filed, January 31,1938; 11:20 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

1936 AGRICULTURAL CONSERVATION PROGRAM—INSULAR REGION

DETERMINATION AS TO THE BASIS FOR DETERMINING PERFORMANCE

Pursuant to the authority vested in me under Section 8 of the Soil Conservation and Domestic Allotment Act, as amended, I, H. A. Wallace, Secretary of Agriculture, do hereby determine that soil maps and reports of soil analyses, made either in 1936 or in 1937, when correctly completed and submitted to the local office of the Insular Division, Agricultural Adjustment Administration, on or before May 31, 1937, will be satisfactory for purposes of compliance with the provisions of paragraph (a) of Practice 7, Part IV, of Bulletin No. 1, 1936 [1] Agricultural Conservation Program, Insular Region.

Done at Washington, D. C., this 31st day of January, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 38-344; Filed, January 31, 1938; 12:42 p. m.]

FEDERAL COMMUNICATIONS COMMISSION.

MODIFICATION OF PARAGRAPHS 12 (C) AND 12 (E) OF THE SHIP RADIOTELEGRAPH SAFETY RULES

The Commission on January 18, 1938 [2] adopted the following:

12 (c) A radiotelegraph transmitter installed on board a vessel of the United States subject to Title III, Part II of the Communications Act of 1934, as amended, which complies with the following specifications, is approved as meeting the requirements of paragraph 12 (b):

(1) *Specifications for a Main Transmitter*

Operating radio frequency	Required frequency tolerance	Required type of emission	Minimum permissible modulation percentage	Minimum permissible frequency of modulation	Maximum permissible frequency of modulation	Power required to be developed
500 kc.	Plus or minus 0.5 percent [1]	A-2	70	300 cycles per second	1,250 cycles per second	At least *500* watts into an average ship station antenna.
Do	do	A-1				At least *160* watts into an average ship station antenna.
375 kc and one working frequency in the band 350-485 kc.	[1] Plus or minus 0.5 percent	A-2	70	300 cycles per second	1,250 cycles per second	At least *140* watts into an average ship station antenna.
375 kc and one working frequency in the band 350-485 kc.	[1] Plus or minus 0.5 percent	A-1				At least *115* watts into an average ship station antenna.

[1] The Inter-American Radio Conference, convened at Havana, Cuba, November 1, 1937, contains the following provisions with respect to mobile stations: New transmitters of mobile stations operating on frequencies in the band 375-500 kc inclusive, installed and licensed after January 1, 1939, shall maintain a frequency tolerance of plus or minus 0.1 per cent. After January 1, 1942, all transmitters of such mobile stations shall maintain a tolerance of 0.1 per cent.

For the purpose of these specifications, the term "average ship station antenna" means an actual antenna installed aboard ship having a capacity of 750 micro-microfarads and an effective resistance of 4 ohms at 500 kc.

A main transmitter will be considered as capable of developing the above specified power and percentage of modulation if it is demonstrated to the satisfaction of the Commis-

[1] 2 F. R. 3056, 3260, 3379 (DI).

[1] 1 F. R. 788.

[2] Paragraph 12 (d) was deleted the same date.

sion that the transmitter involved, or a transmitter of the same identical type, will deliver into an artificial antenna having a capacity of 750 micro-microfarads and an effective resistance of 4 ohms at 500 kc, at least 160 watts of A–1 emission, and at least 200 watts of A–2 emission modulated at least 70 per cent, at 500 kc; and at least 115 watts of A–1 emission, and at least 140 watts of A–2 emission modulated at least 70 per cent, at 375 kc and the one required working frequency; provided however, that if deemed necessary this test may be applied to an individual main transmitter installed aboard a ship before initial or continued approval thereof. For the performance of this test, amplitude modulation shall be employed and the power in the antenna shall be determined by the I²R (direct) method.

In addition to the foregoing specifications, a main transmitter shall be provided with an arrangement for conveniently reducing the power supplied to the antenna circuit to approximately one-half of the rated power.

(2) Specifications applicable only to a main transmitter in existence prior to February 1, 1938

Operating radio frequency	Required frequency tolerance	Required type of emission	Minimum permissible modulation percentage	Minimum permissible frequency of modulation	Maximum permissible frequency of modulation	Power required to be developed
500 kc.	Plus or minus 1.0 per cent for transmitters licensed prior to Sept. 3, 1931 which consist of a self-excited oscillator supplying power to the antenna circuit. Plus or minus 0.5 per cent for other transmitters.[1]	A–2.	50.	100 cycles per second.	1650 cycles per second.	At least 400 watts into an average ship station antenna circuit or at least 400 watts into the plate circuit of the oscillator or amplifier supplying power to the antenna circuit.
375 kc and one working frequency in the band 350–485 kc.	Plus or minus 1.0 per cent for transmitters licensed prior to Sept. 3, 1931 which consist of a self-excited oscillator supplying power to the antenna circuit. Plus or minus 0.5 per cent for other transmitters.[1]	A–2.	50.	100 cycles per second.	1650 cycles per second.	At least 140 watts into an average ship station antenna circuit or at least 280 watts into the plate circuit of the oscillator or amplifier supplying power to the antenna circuit.
500 kc, 375 kc and one working frequency in the band 350–485 kc.	Plus or minus 1.0 per cent for transmitters licensed prior to Sept. 3, 1931. Plus or minus 0.5 per cent for other transmitters.	B [2].		100 cycles per second.	1650 cycles per second.	At least 1000 watts input to the power transformer when the transmitter is supplying power to an average ship station antenna circuit with proper coupling thereto.

[1] The Inter-American Radio Conference, convened at Havana, Cuba, November 1, 1937, contains the following provisions with respect to mobile stations: New transmitters of mobile stations operating on frequencies in the band 375–500 kc inclusive, installed and licensed after January 1, 1939, shall maintain a frequency tolerance of plus or minus 0.1 per cent. After January 1, 1942, all transmitters of such mobile stations shall maintain a tolerance of 0.1 per cent.

[2] The use of a transmitter producing type B emission, which is capable of being operated at a full power input of 300 watts or more, is prohibited after December 31, 1939, by the General Radio Regulations of Madrid, except in cases of distress. See also Commission Rules 209 and 293.

For the purpose of measuring the power developed by a main transmitter in existence prior to February 1, 1938, as specified herein, there may be substituted for an average ship station antenna, an artificial antenna having a capacity of 750 micro-microfarads and an effective resistance of 4 ohms at 500 kc. A transmitter in this classification will be considered as capable of developing the above specified power and percentage of modulation if it is demonstrated to the satisfaction of the Commission that the transmitter involved, or a transmitter of the same identical type, will develop the specified power on the frequencies designated, with the required percentage of amplitude modulation for A–2 emission, when properly coupled either to an average ship station antenna or to an artificial antenna having the values of capacity and resistance herein designated. Power supplied to the antenna circuit shall be measured by the I²R (direct) method. If deemed necessary, this test may be applied to an individual main transmitter installed aboard a ship before initial or continued approval thereof.

(3) A main transmitter which is installed aboard a vessel prior to the effective date of this rule which is not capable of developing the power specified in (2) hereof but which will develop at least 50 watts power, of A–2 emission, into the average ship station antenna circuit or at least 100 watts power into the plate circuit of the oscillator or amplifier supplying power to the antenna circuit, is approved for use in compliance with paragraph 12 (b) until not later than October 1, 1938; provided however, that where two or more transmitters are a part of the radio installation aboard a cargo vessel on the effective date of this rule, one or more of these shall not be removed for the primary purpose of operating the remaining transmitter(s) under the provisions of this rule.

(4) Specifications for Emergency Transmitters

The following specifications must be met when the emergency transmitter is energized by a power supply equivalent to the emergency power supply which is or will be available aboard the type of vessel on which the transmitter is or will be installed and operated.

Operating radio frequency	Required frequency tolerance	Required type of emission	Minimum permissible modulation percentage	Minimum permissible frequency of modulation	Maximum permissible frequency of modulation	Power required to be developed
500 kc.	Plus or minus 1.0 percent for transmitters licensed prior to Sept. 3, 1931 which consist of a self-excited oscillator supplying power to the antenna circuit. Plus or minus 0.5 per cent for other transmitters.[1]	A–2.	50 for transmitters in existence prior to Feb. 1, 1938. 70 for other transmitters.	100 cycles per second for transmitters in existence prior to Feb. 1, 1938. 300 cycles per second for other transmitters.	1650 cycles per second for transmitters in existence prior to Feb. 1, 1938. 1250 cycles per second for other transmitters.	At least 50 watts into an average ship station antenna circuit or at least 100 watts into the plate circuit of the oscillator or amplifier supplying power to the antenna circuit.
375 kc.	Plus or minus 1.0 percent for transmitters licensed prior to Sept. 3, 1931 which consist of a self-excited oscillator supplying power to the antenna circuit. Plus or minus 0.5 per cent for other transmitters.[1]	A–2.	50 for transmitters in existence prior to Feb. 1, 1938. 70 for other transmitters.	100 cycles per second for transmitters in existence prior to Feb. 1, 1938. 300 cycles per second for other transmitters.	1650 cycles per second for transmitters in existence prior to Feb. 1, 1938. 1250 cycles per second for other transmitters.	At least 30 watts into an average ship station antenna circuit or at least 60 watts into the plate circuit of the oscillator or amplifier supplying power to the antenna circuit.

[1] The Inter-American Radio Conference, convened at Havana, Cuba, November 1, 1937, contains the following provisions with respect to mobile stations: New transmitters of mobile stations operating on frequencies in the band 375–500 kc inclusive, installed and licensed after January 1, 1939, shall maintain a frequency tolerance of plus or minus 0.1 per cent. After January 1, 1942, all transmitters of such mobile stations shall maintain a tolerance of 0.1 per cent.

Operating radio frequency	Required frequency tolerance	Required type of emission	Minimum permissible modulation percentage	Minimum permissible frequency of modulation	Maximum permissible frequency of modulation	Power required to be developed
500 kc, 375 kc and one working frequency in the band 350-405 kc.	Plus or minus 1.0 per cent for transmitters licensed prior to Sept. 3, 1931. Plus or minus 0.5 per cent for other transmitters.	B [1]		100-cycles per second	1,650 cycles per second	At least 500 watts input to the power transformer when the transmitter is supplying power to an average ship station antenna circuit with proper coupling thereto.

[1] The use of a transmitter producing type B emission, which is capable of being operated at a full power input of 300 watts or more, is prohibited after December 31, 1939 by the General Radio Regulations of Madrid, except in cases of distress. See also Commission Rules 209 and 293.

An emergency transmitter will be considered as capable of developing the power herein specified if the actual power developed is demonstrated by the same method as expressly set forth in (2) hereof; provided however that, if deemed necessary, this test may be applied to an individual emergency transmitter installed aboard a ship before initial or continued approval thereof.

(5) Each transmitter which was not in existence prior to February 1, 1938, but which is installed after that date aboard a vessel in order to comply with these rules shall be furnished with a durable nameplate with the month and year of its completion permanently inscribed thereon.

(6) Nothing in these specifications for transmitters shall prevent the use of any additional frequencies or any additional type of emission, by a ship radiotelegraph station, in accordance with the terms of its outstanding license(s) granted by the Commission.

12 (e) The Commission, in an exceptional case, for a passenger vessel of less than 600 gross tons, may waive those parts of the provisions of paragraph (c) hereof relating to the minimum acceptable power of main transmitters, if a satisfactory showing is made that an installation of the specified minimum power is highly impracticable.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 38-314; Filed, January 29, 1938; 9:37 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. IT-5486]

APPLICATIONS OF OKLAHOMA GAS AND ELECTRIC COMPANY AND WESTERN LIGHT AND POWER CORPORATION

ORDER FIXING DATE OF HEARING

JANUARY 25, 1938.

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

Upon application filed September 28, 1937, revised January 20, 1938, pursuant to Section 203 of the Federal Power Act, by Oklahoma Gas and Electric Company, a corporation organized under the laws of the territory of Oklahoma (now State of Oklahoma) and having its principal place of business in Oklahoma City, Oklahoma, for an order authorizing it to acquire the entire physical properties of Western Light and Power Corporation, likewise an Oklahoma corporation, including certain facilities employed in the interstate transmission of electric energy, and to connect such facilities with those owned and operated by the applicant; upon supplement to said applications filed January 24, 1938 by Western Light and Power Corporation, a corporation organized under the laws of the State of Oklahoma and having its principal place of business in Kansas City, Kansas, for authority to sell all of its electric facilities to Oklahoma Gas and Electric Company;

The Commission orders: That a hearing on said applications be held on February 14, 1938 at 10 A. M. in the Commission's hearing room in the Hurley Wright Building, 1800 Pennsylvania Avenue NW., Washington, D. C.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 38-323; Filed, January 31, 1938; 10:02 a. m.]

[Docket No. IT-5506]

APPLICATION OF THE SOUTHERN NEBRASKA POWER COMPANY

ORDER SETTING DATE OF HEARING

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

JANUARY 25, 1938.

Upon application filed January 24, 1938, pursuant to Section 203 (a) of the Federal Power Act, by The Southern Nebraska Power Company, a Nebraska corporation having its principal business office at Superior, Nebraska, for an order authorizing the sale of all of its facilities to The Central Nebraska Public Power and Irrigation District, a Nebraska public corporation;

The Commission orders that: A public hearing on said application be held on February 21, 1938, at 10 a. m. in the hearing room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue NW., Washington, D. C.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 38-324; Filed, January 31, 1938; 10:02 a. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 22nd day of January, A. D. 1938.

Commissioners: Garland S. Ferguson, Jr., Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[DOCKET NO. 2442]

IN THE MATTER OF RARITAN DISTILLERS CORPORATION, A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That John J. Keenan, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Monday, February 7, 1938, at ten o'clock in the forenoon of that day (eastern standard time), in Room 200, Post Office Building, New Brunswick, New Jersey.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 38-325; Filed, January 31, 1938; 10:14 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 21st day of January, A. D. 1938.

Commissioners: Garland S. Ferguson, Jr., Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[Docket No. 3259]

IN THE MATTER OF THE SPERRY CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That W. W. Sheppard, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Tuesday, February 1, 1938, at ten o'clock in the forenoon of that day (eastern standard time), in Room 424, 815 Connecticut Avenue, Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary*.

[F. R. Doc. 38-326; Filed, January 31, 1938; 10:14 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of January, A. D. 1938.

Commissioners: Garland S. Ferguson, Jr., Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[Docket No. 3031]

IN THE MATTER OF THE GREAT ATLANTIC & PACIFIC TEA COMPANY

FINDINGS AS TO THE FACTS AND CONCLUSIONS

Pursuant to the provisions of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, (The Clayton Act), as amended by Section One of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes", approved June 19, 1936, (the Robinson-Patman Act), the Federal Trade Commission on January 13, 1937, issued and served its complaint in this proceeding upon The Great Atlantic & Pacific Tea Company, Respondent herein, charging it with violating the provisions of Paragraph (c) of Section 2 of the said Act as amended. After the issuance of said complaint and the filing of Respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by J. J. Smith, Jr., and W. N. Baughman, attorneys for the Commission, before William C. Reeves, an Examiner for the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Caruthers Ewing, Watson, King & Brode and George J. Feldman, attorneys for the said Respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, answer, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the said J. J. Smith, Jr., for the Commission, and the said Caruthers Ewing for the Respondent, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its Findings as to the Facts and its Conclusions:

Findings

PARAGRAPH 1. The Respondent, The Great Atlantic & Pacific Tea Company, is a corporation organized and existing under the laws of the State of New Jersey, and maintains its principal office and place of business at 420 Lexington Avenue, in the City of New York, New York.

PAR. 2. The Respondent is engaged in the retail grocery business, and, together with its affiliates, owns and operates more than 14,800 retail grocery stores located in thirty-eight states and in the District of Columbia.

PAR. 3. In the course and conduct of its business the Respondent is engaged in competition with many retail grocery concerns in every city in which it operates a store or stores; and the Respondent purchases for resale at its said stores commodities which it causes to be shipped in interstate commerce from the state in which said commodities are located at the time they are purchased by the Respondent across state lines through and into states other than the state in which said commodities are located at the time they are purchased by the Respondent, and the Respondent ships commodities from its warehouses across state lines to its stores located in states other than the states in which its said warehouses are located.

PAR. 4. The Respondent's organization is divided along geographical lines into a number of divisions, each division being composed of several units, a unit being the territory serviced by a central warehouse operated by the Respondent and from which Respondent's various retail stores in that territory obtain most of the commodities sold to the public by the Respondent at its said stores. The purchasing operations of each division are under the general supervision and control of a purchasing director for that division. Each warehouse or unit, however, has a warehouse buyer, or unit buyer, hereinafter referred to as warehouse buyer, who is authorized to, and does, purchase commodities for distribution from that warehouse to the Respondent's stores located in the territory serviced by it.

PAR. 5. Several years prior to the filing of the complaint herein, the Respondent established, and has since continuously maintained and now maintains, geographically convenient to important sources of supply, a number of central buying offices, located in Rochester, New York; Baltimore, Maryland; New Orleans, Louisiana; San Francisco, California; Milwaukee, Wisconsin, and other cities. These central buying offices continuously have been and now are in charge of and operated by agents employed by the Respondent. The duties of said agents continuously have been and now are to find sources of supply for the Respondent, to furnish the Respondent with market information, and to purchase commodities for the Respondent.

PAR. 6. Both before and after June 19, 1936, the agents in charge of said central buying offices were, and now are, employed by the Respondent on a salary basis, and all of their office expenses were and now are paid by the Respondent. Prior to June 19, 1936, Respondent called said agents "brokers," thereafter, "purchasing agents," "field buying agents" or "buyers," but this change in name involved no change in said agents' aforesaid duties to the Respondent or in their methods of operating in performing those duties. Said agents are hereinafter referred to as field buying agents.

PAR. 7. At all times during the period in which said field buying agents have been employed by Respondent said field buying agents have been, and are now, employed solely by

Respondent, and by no individual, partnership, or corporation whatsoever other than Respondent, and in all matters and transactions participated in by said field buying agents relative to or in connection with the business of Respondent or the purchase of commodities by, or the sale thereof to, the Respondent, said field buying agents acted, and now act, in fact for and in behalf, and as the agents and representatives of Respondent only, and in such matters and transactions said field buying agents did not, and no not now, act in fact for or in behalf, or as the agents or representatives, of any individual, partnership, or corporation whatsoever other than Respondent.

PAR. 8. At all times during the period in which said field buying agents have been employed by Respondent said field buying agents were, and are now, subject to and under the sole control of Respondent in all matters and transactions participated in by said field buying agents relative to or in connection with the business of Respondent or the purchase of commodities by, or the sale thereof to, the Respondent, and in such matters and transactions said field buying agents were not, and are not now, subject to or under the control of, or controlled by, any individual, partnership, or corporation whatsoever other than the Respondent.

PAR. 9. The loyalty and allegiance of Respondent's field buying agents are due solely to the Respondent, and in all matters and transactions participated in by said field buying agents relative to or in connection with the business of Respondent or the purchase of commodities by or the sale thereof to the Respondent, said field buying agents devote their loyalty and allegiance solely to the Respondent.

PAR. 10. The Respondent is the sole direct and intended beneficiary of all activities of said field buying agents in connection with negotiations for the purchase and the purchase of commodities by, or the sale thereof to, the Respondent, and the benefits to sellers from such activities are incidental to the services rendered by said field buying agents to the Respondent.

PAR. 11. The field buying agents of the Respondent operate as follows, to-wit: From persons engaged in the business of manufacturing and selling commodities in the respective territories in which said field buying agents are located, such persons being hereinafter referred to as sellers, the field buying agents obtain prices on commodities being offered for sale by said sellers. If the price and quality of the commodities offered for sale by said sellers meet the approval of said field buying agents they communicate their information to the Respondent's divisional purchasing directors, warehouse buyers and others in the Respondent's employ. If a field buying agent thinks that commodities offered for sale by sellers are not of proper quality or are not offered at a satisfactory price or that it would not be to the interest of the Respondent to purchase said commodities, he either so informs the Respondent's purchasing directors and warehouse buyers or he does not communicate those sellers' offerings to them. When a purchasing director or warehouse buyer desires any commodities concerning which he has received information from a field buying agent, or which he knows a field buying agent can purchase for him, he communicates that fact to the field buying agent whom he instructs to purchase the desired commodities. The field buying agent then negotiates with various sellers of said commodities for price and terms satisfactory to the Respondent, and, if able to come to an agreement with a seller on such price and terms, purchases the desired commodities for the Respondent. Having purchased commodities from a seller, the field buying agent usually confirms his purchase by executing a purchase order or contract which he signs for and on behalf of the Respondent and as its agent and forwards to the seller.

PAR. 12. In the course of performing their duties to the Respondent its field buying agents exchange with sellers, as is customary in the trade, information of all kinds affecting market conditions. At times said field buying agents visit the manufacturing establishments of sellers and advise sellers how to improve the quality of sellers' commodities and in what size containers said commodities should be packed. Said field buying agents also furnish sellers with traffic information concerning the routing of commodities purchased by the Respondent. At times when sellers have made special drives to dispose of carry-overs or surplus commodities which have threatened to unstabilize markets, and at times when some sellers have needed immediately to dispose of large quantities of their commodities to avoid incipient bankruptcy or other acute financial embarrassment, the Respondent's field buying agents, when not contrary to the interests of the Respondent, have brought such matters to the attention of Respondent's divisional purchasing directors and warehouse buyers, requesting them to cooperate with sellers in sellers' efforts to sell said commodities, and on instructions from said divisional purchasing directors and warehouse buyers have purchased for the Respondent large quantities of commodities from such sellers. While sellers benefit from the information and advice of Respondent's field buying agents with respect to market conditions, routing of shipments, improving the quality of commodities, and size of containers, and the activities of said field buying agents in cases of carry-overs, surpluses, and financial distress, it is the duty of Respondent's field buying agents, and it is to the interest of the Respondent, to develop and maintain adequate sources of supply of commodities of good quality packed in popular size containers and to have shipments of commodities routed as desired by the Respondent; it is also to the interest of the Respondent to avoid carry-overs and surpluses which threaten to unstabilize markets. The activities of Respondent's field buying agents in connection with furnishing information and advice to sellers and in bringing to the attention of Respondent's divisional purchasing directors and warehouse buyers sellers' desires or necessities in connection with disposing of large quantities of their commodities and requesting their cooperation with such sellers said field buying agents are rendering services to, and promoting the interest of, the Respondent and are not performing or rendering to sellers any selling of brokerage service or any services whatsoever in connection with the sale of goods by said sellers to the Respondent or the purchase thereof by the Respondent from said sellers.

PAR. 13. On said field buying agents' purchases of commodities for Respondent prior to June 19, 1936, the sellers of such commodities paid monthly to said field buying agents brokerage in the same amount paid by said sellers to brokers who sold commodities as agents of and for said sellers, which brokerage the said field buying agents received for and on behalf of Respondent, and as the property of Respondent, and paid over to the Respondent, said field buying agents neither having nor claiming any right, title or interest therein whatsoever.

PAR. 14. Shortly after June 19, 1936, the Respondent instructed its field buying agents to accept no more brokerage on their purchases of commodities for Respondent, and to make all future purchases of commodities for Respondent on one of the following bases, to which instructions said field buying agents conformed, to-wit:

(*a*) To purchase commodities for Respondent on a net basis reflecting a reduction from sellers current prices to other customers, or from the general market prices at which commodities were being sold by said sellers, of the amount of brokerage paid by said sellers to said field buying agents prior to June 19, 1936, as aforesaid in Paragraph Thirteen, *supra*, and currently being paid by said sellers to their brokers.

(*b*) To execute so-called "quantity discount agreements" with sellers upon the form appearing in the record herein as Respondent's Exhibit 18–C. Said agreement forms were filled in to provide for the payment to the Respondent monthly, as a so-called "quantity discount", of an amount equal to the brokerage paid monthly by said sellers to said field buying agents prior to June 19, 1936, as aforesaid in Paragraph Thirteen, *supra*, and currently being paid by said sellers to their brokers. In some instances said agreements

were made retroactive from the date of execution to June 19, 1936, and in some instances where said agreements purported to require the Respondent to purchase a stipulated quantity of commodities during the existence of the agreement in order to earn the "discount" for which provision was therein made, it was understood and agreed between the Respondent's said field buying agents and the sellers that the Respondent was to receive said "discount" regardless of the provisions of said agreements with respect to the quantity of commodities to be purchased by the Respondent thereunder.

(*c*) To make with sellers unwilling to sell on either of the two preceding bases an agreement providing that said sellers were to keep a record of all brokerage which but for the Robinson-Patman Act said sellers would have paid to said field buying agents as aforesaid in Paragraph Thirteen, *supra*, and to pay said brokerage in escrow, or set it up as an "abeyance account" on the sellers' books, said brokerage to be paid to the Respondent when, as, and if, the legality of the payment thereof should be determined.

Since June 19, 1936, the Respondent has purchased commodities in interstate commerce on each of said bases.

PAR. 15. Subsequent to the effective date of the Robinson-Patman Act the said field buying agents of the Respondent knew the current prices at which sellers from whom they were purchasing commodities for the Respondent were selling those commodities to their customers other than Respondent, and were at all times well posted and informed of the general market prices at which commodities being purchased by them for the Respondent were being sold. In computing the net prices at which the said field buying agents purchased commodities for the Respondent subsequent to the effective date of the Robinson-Patman Act, said field buying agents deducted from sellers' current prices to their customers other than Respondent, or from the general market prices at which commodities were being sold, as the case might be, an amount equal to the brokerage which but for the Robinson-Patman Act said sellers would have paid to said agents as aforesaid in Paragraph Thirteen *supra*.

PAR. 16. The Respondent feared the loss of brokerage upon purchases of commodities made other than on the net basis, or on the quantity discount basis, as described respectively in sub-paragraphs (*a*) and (*b*) of Paragraph Fourteen, *supra*, and instructed its field buying agents to make all purchases possible on said net basis or on said quantity discount basis. On purchases of commodities made on said net basis or on said quantity discount basis the Respondent did not request that brokerage be paid in escrow or set up as an "abeyance account" on sellers' books as aforesaid in sub-paragraph (*c*) of Paragraph Fourteen, *supra*, but on all purchases not made on one of said bases the Respondent did request sellers to pay brokerage in escrow, or set brokerage up on their books as an "abeyance account" as aforesaid in sub-paragraph (*c*) of Paragraph Fourteen, *supra*.

PAR. 17. Not all of the net prices at which the said field buying agents purchased commodities for the Respondent subsequent to June 19, 1936 reflected a reduction of the exact amount of brokerage which but for the Robinson-Patman Act said sellers would have paid to said field buying agents as aforesaid in Paragraph Thirteen, *supra*, because an exact reduction frequently resulted in a sale price involving fractions which were not used in the trade, and the Respondent instructed its said field buying agents to avoid the use of such fractions wherever possible in agreeing upon the net price to be paid for commodities by the Respondent so that said net prices would not appear to involve any allowance in lieu of brokerage.

PAR. 18. Other customers of sellers who sold commodities to the Respondent on the bases outlined in Paragraph Fourteen, *supra*, purchased from those sellers in individual quantities as large as those in which the Respondent purchased, but with extremely few exceptions, in no wise affecting the facts in this matter, the Respondent was the only customer of said sellers to whom said sellers sold commodities on said bases, and the Respondent's purchases from said sellers were made on one of said bases regardless of the quantity of commodities purchased by it.

PAR. 19. When the Respondent's field buying agents purchase from sellers commodities for the Respondent the services of no brokers are used or invoked by sellers or by the Respondent, and said sellers do not receive or have the benefit of any selling or brokerage services rendered by any broker or by the Respondent or by any agent or employee of the Respondent, but in purchasing commodities on the net price and quantity discount bases above referred to in Paragraph Fourteen the Respondent obtains, receives and accepts the equivalent of brokerage currently paid by sellers to their brokers for brokerage services actually rendered to said sellers by their said brokers in selling commodities for said sellers.

PAR. 20. Some sellers effect savings other than brokerage on purchases made for the Respondent by the Respondent's field buying agents, but the only savings represented by the net prices and quantity discounts above referred to in Paragraph Fourteen were brokerage savings accruing to sellers as a result of having themselves made sales to the Respondent without invoking or using the selling or brokerage services of another, and no savings other than brokerage savings were intended to be, or were, passed on by sellers to the Respondent or received by the Respondent from sellers.

PAR. 21. The function of, and the services performed by, brokers representing sellers in connection with the sale of commodities is to find customers for sellers and, acting under and subject to the control of sellers, to sell commodities to those customers for and on behalf of sellers and as the agents of said sellers; the brokers' function in such cases is a selling function, and the service rendered by them is a selling service rendered to sellers.

PAR. 22. In all matters and transactions wherein the Respondent's field buying agents purchase commodities for Respondent or negotiate or deal with sellers in connection with the purchase of commodities by or the sale thereof to the Respondent all of the services of said field buying agents are intended to be and in fact are rendered to the Respondent solely, and in said matters and transactions said field buying agents intend to and in fact do represent the Respondent solely as its purchasing agents and intend to and in fact do act for and in behalf of the Respondent only and under its sole control, and in said matters and transactions said field buying agents do not intend to and in fact do not represent sellers as their agents or act for or in behalf or under the control of sellers and do not intend to and in fact do not render to sellers any brokerage or selling services whatsoever or any other form of services in connection with the sale of commodities to or the purchase thereof by the Respondent.

PAR. 23. No brokerage or selling services whatsoever, or any other form of services in connection with the purchase of commodities by, or the sale thereof to, the Respondent are intended to be or are rendered to sellers by the Respondent or by any agents or employees of the Respondent.

PAR. 24. Subsequent to June 19, 1936, for resale in its above-mentioned retail grocery stores, the Respondent has purchased commodities in interstate commerce on the basis referred to in sub-paragraph (*a*) of Paragraph Fourteen, *supra*, from many sellers who are engaged in selling commodities through brokers in interstate commerce in competition with other sellers of similar commodities, and in so doing the Respondent has received and accepted allowances and discounts in lieu of brokerage.

PAR. 25. Subsequent to June 19, 1936, for resale in its above-mentioned retail grocery stores, the Respondent has made purchases of commodities in interstate commerce on the basis referred to in sub-paragraph (*b*) of Paragraph Fourteen, *supra*, from many sellers who are engaged in selling commodities through brokers in interstate commerce in competition with other sellers of similar commodities and has received and accepted on said purchases payment of the so-called "quantity discount" referred to in said sub-para-

graph (*b*) of Paragraph Fourteen, *supra*, and in receiving and accepting payment of said so-called "Quantity discounts" the Respondent has received and accepted allowances and discounts in lieu of brokerage.

PAR. 26. The effect of the receipt of allowances and discounts in lieu of brokerage by the Respondent has been, and will continue to be, to cause substantial injury to competition between those sellers who have granted and paid such allowances and discounts to the Respondent and those sellers who have refused to do so, in that there has been and there will continue to be a diversion of Respondent's business from the latter to the former, and the effect of the receipt of allowances and discounts in lieu of brokerage by the Respondent has a direct and immediate tendency substantially to injure, destroy and prevent competition between Respondent and Respondent's competitors in the resale of commodities upon the purchase of which the Respondent receives discounts and allowances in lieu of brokerage in that the Respondent, by the receipt of such discounts and allowances in lieu of brokerage, is enabled to and does purchase commodities at prices substantially lower than the prices at which its competitors can and do purchase the same commodities from the same sellers and the Respondent is thereby enabled to resell said commodities at prices substantially lower than the prices at which its competitors can resell said commodities.

Conclusion

The Respondent takes the position: First—That it has accepted no discounts or allowances in lieu of brokerage. Second—That if it be held to have accepted allowances or discounts in lieu of brokerage it rendered to sellers services therefor within the meaning of Paragraph (*c*) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. Third—That the provisions of Section 2 (*c*) of said Act, as amended, must be held to be limited by the cost proviso or differentials provisions of Paragraph (*a*) thereof, which should be construed to permit the passing on of brokerage savings by way of a net price differential or quantity discount.

The Commission is unable to adopt this reasoning, and concludes and finds that the Respondent has received discounts and allowances in lieu of brokerage in violation of said Paragraph (*c*) of Section 2 of the Clayton Act as amended.

The Respondent contends that there is a vast difference and valid distinction between a differential which merely reflects or is the equivalent of brokerage savings and a discount or allowance in lieu of brokerage; that a discount or allowance made as a part of the price of goods can not come within the scope of Paragraph (*c*), although equivalent to brokerage and intended to reflect it.

We cannot accept this argument. The supposed distinction between a discount or allowance equivalent to brokerage, made as a part of the price of goods, and a discount or allowance in lieu of brokerage reflected by the price of goods appears to us as too tenuous for approval.

The argument assumes one of the fundamental issues in this case, namely, whether or not brokerage may be passed on to buyers as a savings in cost under the cost proviso or differentials provisions of Paragraph (*a*) of Section 2 of the Act.

If that may not be done, it cannot successfully be contended that there is any difference between a price reflecting an allowance in lieu of brokerage and a price reflecting brokerage savings—in each instance the price is mathematically the same, and the lower price is lower, by an amount wholly or partly equivalent to brokerage, for no other reason than that that price is given instead of brokerage being paid on the basis of a higher price.

The words "in lieu of," "discount," and "allowance" are well understood and there can be no dispute as to their respective definitions.

"In lieu of" means instead of, in place of, or in substitution for.

"Allowance" means abatement, deductions, or concession.

"Discount" means deduction, allowance from a price asked, or deduction from the usual price made for some special reason.

Taking the plain and simple meaning of these words, it seems impossible to say that a net price arrived at by deducting from a regular price an amount equal to brokerage formerly paid, and now currently paid to brokers, because that brokerage is no longer to be paid, is a price which does not involve a discount or allowance in lieu of brokerage.

If and insofar as intent is an element of an allowance or discount in lieu of brokerage, the intent necessary to characterize as such the Respondent's net prices and quantity discounts, referred to in Paragraph Fourteen, *supra*, existed here. The net price differentials and the quantity discounts in question were generally equal in amount to brokerage paid to the Respondent's field buying agents prior to June 19, 1936, and currently being paid by sellers to independent brokers and were passed on by the sellers and accepted by the Respondent to take the place of, and in substitution for, brokerage paid to the Respondent's field buying agents prior to that date. Counsel for the Respondent conceded in their brief that the net prices and quantity discounts allowed Respondent did not represent any form of savings to sellers whatsoever other than the brokerage savings accruing to sellers as a result of having themselves made sales to the Respondent without incurring any obligation to pay brokerage thereon to an independent broker. The Commission concludes that such net price differentials and quantity discounts were allowances and discounts in lieu of brokerage and were affirmatively intended as such by both sellers and the Respondent.

The Clayton Act, as amended by the Robinson-Patman Act, has a dual purpose which is apparent both from the form of the Act itself and from the reports of the several Congressional Committees which considered and commented upon it. The Act was directed not only at price discriminations but also at certain practices which involved both price discriminations and unfair methods of competition.

Paragraph (*a*) generally prohibits both direct and indirect discriminations in price. If discriminations in price were the only evils sought to be terminated by the Act there was no necessity for including in it Paragraphs (*c*), (*d*), or (*e*) because the practices thereby condemned, themselves involving indirect price discriminations, could have been terminated under Paragraph (*a*) insofar as they could be shown injuriously to affect competition in particular cases. By directing those particular paragraphs at those particular practices, it is believed that Congress manifested a purpose and intent to condemn and proscribe such practices, not merely and simply because they involved price discriminations, but because they were considered by Congress to be inherently unfair methods of competition which were *per se* injurious to commerce.

As stated by the report of the House Committee on the Judiciary in reporting the Robinson-Patman Act its purpose was

"* * * to restore, so far as possible, equality of opportunity in business * * * by protecting trade and commerce against unfair trade practices and unlawful price discriminations, and also against restraint and monopoly for the better protection of consumers, workers, and independent producers, manufacturers, merchants, and other businessmen.

"To accomplish its purpose, the bill amends and strengthens the Clayton Act * * *

"More than 20 years' experience and observation with respect to the operation of the Clayton Act, together with new methods of trade and industrial organization that have since developed, have convinced your committee of the shortcomings of existing legislation, and of the need for strengthening existing laws and of fitting them more perfectly to the methods and needs of today. This your committee has striven to do with a careful regard to the preservation of full freedom and sound and honest business meth-

ods * * * but with a firm resolve not to permit the desire of privilege to masquerade under the claim of right."

(Report of House Committee on the Judiciary 74th Congress, 2nd Session, House of Representatives Report Number 2287, Pages 3, 6.)

It is thus apparent that the Act is directed at a multiplicity of evils which may be classified generally as price discriminations and unfair trade practices.

The Commission concludes that it was the intention of Congress to proscribe absolutely and unconditionally as an undesirable and unfair trade practice and method of competition, the payment of brokerage and the granting of any allowance or discount in lieu thereof by sellers to buyers on the latters' own purchases of goods, and that the inclusion in Paragraph (*c*) of the clause "except for services rendered in connection with the sale of goods" was not intended to set up a condition upon which such brokerage could be paid or such allowance or discount be granted. This conclusion is sustained and, indeed, required by the reports of the various committees which dealt with the Act.

As originally introduced in the House and Senate Paragraph (c) (Paragraph (b) at that time) unqualifiedly prohibited the payment of brokerage by a seller to any intermediary acting for the buyer or subject to the buyer's control. It did not prohibit the payment of brokerage directly to a buyer, however, or make any reference to "services rendered." The Paragraph then read:

"(b) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation to an agent, representative, or other intermediary in connection with the sale or purchase of goods, wares, or merchandise, where such intermediary is acting therein for or in behalf or is subject to the direct or indirect control, of any party to such purchase and sale transaction other than the person by whom such compensation is so granted or paid."

Upon being referred to the Committee on the Judiciary of the respective houses the Paragraph was amended to read exactly as it now reads, except that the "services rendered" clause was not inserted by the Senate Committee.

The Senate amendment merely added to the existing prohibition of Paragraph (c) an additional prohibition against the payment of brokerage direct to the buyer, reenforcing the Paragraph with a provision that no discount or allowance in lieu of brokerage should be permitted. The Paragraph as thus amended was reported to the Senate on February 3, 1936, as follows:

"In section (b) the phrases 'or any allowance or discount in lieu thereof', and 'either to the other party to such transaction' are added by your committee's recommendation. As so revised, this section forbids the payment or allowance of brokerage, either to the other principal party, or to an intermediary acting in fact for or under the control of the other principal party, to the purchase and sale transaction.

"Among the prevalent modes of discrimination at which this bill is directed, is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases, or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made. Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a 'broker,' so labeled, enters the picture at all, it is one whom the buyer points out to the seller, rather than one who brings the buyer to the seller is but to permit the corruption of this function to the purposes of competitive discrimination. The relation of the broker to his client is a fiduciary one. To collect from a client for services rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume." (74th Congress, 2nd Session, Senate Report Number 1502, Page 7.)

It is clear that Paragraph (c), as it then stood, prohibited the payment of brokerage by a seller to a buyer, and the grant of any discount or allowance in lieu thereof, under all circumstances and without regard to any question of services rendered, and that the Senate so construed it.

On March 31, 1936, the House Committee on the Judiciary, having amended Paragraph (c) to conform to the Senate amendment and added the services rendered clause thereto, reported the Bill to the House with the following comments, the underscored parts of which were adopted word for word from the Senate Report quoted above:

"Section (b) deals with the abuse of the brokerage function for purposes of oppressive discrimination. The true broker serves either as representative of the seller to find him market outlets, or as representative of the buyer to find him sources of supply. In either case he discharges functions which must otherwise be performed by the parties themselves through their own selling or buying departments, with their respective attendant costs. Which method is chosen depends presumptively upon which is found more economical in the particular case; but whichever method is chosen, its cost is the necessary and natural cost of a business function which cannot be escaped. It is for this reason that, when free of the coercive influence of mass buying power, discounts in lieu of brokerage are not usually accorded to buyers who deal with seller direct since such sales must bear instead their appropriate share of the seller's own selling cost.

"*Among the prevalent modes of discrimination at which this bill is directed is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases, or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made.* But the positions of buyer and seller are by nature adverse, and it is a contradiction in terms incompatible with his natural function for an intermediary to claim to be rendering services for the seller when he is acting in fact for or under the control of the buyer, and no seller can be expected to pay such an intermediary so controlled for such services unless compelled to do so by coercive influences in compromise of his natural interest. *Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a 'broker', so labeled, enters the picture at all, it is one whom the buyer points out to the seller, rather than one who brings the buyer to the seller,* would render the section a nullity. *The relation of the broker to his client is a fiduciary one. To collect from a client for services rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume.*

"Section (b) permits the payment of compensation by a seller to his broker or agent for services actually rendered in his behalf; Likewise by a buyer to his broker or agent for services in connection with the purchase of goods actually rendered in his behalf; but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance by the buyer direct to the seller, or by the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary acting in fact for or in behalf, or subject to the direct or indirect control, of the

other." (74th Congress, 2nd Session, House of Representatives Report number 2287, Pages 14, 15.) [Italics supplied.]

This report shows on its face that Paragraph (c) as it now stands, containing the "services rendered" clause, was given the same construction by the House Committee as it had heretofore been given by the Senate Committee before that clause was inserted. This in itself seems sufficient to require the conclusion that the House did not intend the "services rendered" clause to be construed as a condition upon which brokerage could be paid by sellers to buyers. Definite support for this conclusion is found in the Conference Report of the Committee of Conference of the House and Senate which considered the bills passed by each and reported out the Robinson-Patman Act in the form in which it was enacted. That Report states:

"Subsection (c) deals with brokerage. It is the same as subsection (b) in the House bill, which in turn is the same as sub-section (c) in the Senate amendment, except that the words 'except for services rendered,' as contained in the House bill, do not appear in the Senate amendment. In the conference report these words are retained * * *. With the words of the House bill thus retained, this subsection permits the payment of compensation by a seller to his broker * * * for services actually rendered in his behalf; * * * but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance * * * by the seller direct to the buyer * * *." (74th Congress, 2nd Session, House of Representatives Report Number 2951, Page 7.)

In line with this Report Representative Utterback, one of the House managers of the Conference Committee, said of Paragraph (c) in reporting the Act from that Committee to the House:

"* * * it prohibits the payment or allowance of * * * brokerage on the purchase * * * of goods * * * to the other party to the transaction * * * that is, the party other than the one who pays the * * * brokerage * * *." (74th Congress, 2nd Session, 80 Congressional Record, Part 9, Page 9418.)

He further stated:

"* * * where sales are made from buyer to seller, in the nature of the case no brokerage services are rendered by either, and no payment or allowance on account thereof can be made * * *." (*Id.*)

It thus seems entirely clear that Paragraph (c) was intended by Congress to prohibit without qualification the payment of brokerage, and the granting of any allowance or discount in lieu thereof, by a seller to a buyer on the latter's purchases, and that the "services rendered" clause was not meant to limit that prohibition in any manner or to any degree whatsoever.

Legislative intent notwithstanding, however, it is urged that this clause must be construed to permit the payment of brokerage to a buyer in return for services rendered to a seller. The arguments are that since Paragraph (c) as originally drawn, without the words "except for services rendered," prohibited only the payment of brokerage by sellers to buyers' agents, the exception to that limited prohibition must be held not to extend the prohibition but to relax it within its original limitations; and, as urged by the Respondent, by writing the exception into Paragraph (c) Congress in fact asserted a belief that a buyer could render services to a seller because the exception of a particular thing from general words proves that, in the opinion of the legislature, the thing excepted would be within the general clause had the exception not been made.

In the light of clear Congressional intent to the contrary, the Commission cannot accept these arguments. Moreover, they ignore the well-established rule of statutory construction that exceptions are to be strictly construed, all doubts being resolved in favor of general provisions rather than exceptions, and the premise of the argument first stated is not entirely accurate.

It will be recalled that Paragraph (c) as originally drawn, without the "services rendered" exception, prohibited the payment of brokerage not simply to anyone acting for the buyer but to any "intermediary * * * acting * * * for or in behalf or * * * subject to the direct or indirect control" of the buyer.

The Commission, in the exercise of its knowledge of the manner in which ordinary business affairs are transacted, knows that the language quoted was susceptible of a construction which might have prohibited in many cases the payment of brokerage by a seller to an independent broker for brokerage services actually rendered. A broker (and the reference is to selling brokers, as distinguished from buying brokers, so to speak) occupies an anomalous position in commerce and in law. He is an independent business man in the sense that he is engaged in business for himself. But the business in which he is engaged is that of acting as a local sales representative for manufacturers. A broker pays the expenses of operating his business and is dependent for his income upon a commission, called "brokerage," paid to him on and measured by sales which he makes for the manufacturers whom he represents. The essential service which he performs for manufacturers, and the only service for which he is paid, is a selling service, although he renders many other services.

In the course of conducting his business a broker must and does also render services to buyers—but those services, unlike the services rendered to the Respondent by its field buying agents, are not buying services. A broker is not employed by buyers. He is employed and paid by sellers as their selling agent and he represents his seller-principals only. His activities in connection with his representation of his seller-principals are controlled by them, but, paradoxically, because of the broker's anomalous position as an independent sales agent in business for himself, he does act for buyers in a sense and he is subject to a degree of control on their part.

This results from requests by buyers that brokers report complaints to their seller-principals, that brokers communicate cancellations of orders to their seller-principals, that brokers submit to their seller-principals offers of buyers to purchase commodities at prices stipulated by buyers, that brokers endeavor to make up "pool" cars of merchandise among several buyers so that the buyers may obtain the advantage of quantity prices and carload rates of freight, that brokers obtain quotations of prices from their seller-principals for the consideration of buyers, and perhaps, in other ways. Naturally it is to the mutual interest and advantage of brokers and sellers to maintain the good will of their common customers, and brokers generally endeavor to comply with the reasonable requests of buyers along the lines indicated. In the course of negotiating sales from seller to buyer and bringing them into agreement brokers are necessarily guided somewhat by instructions from each, but in the essential particular of selling commodities and consummating sales they act for and are controlled by the latter alone, who in the absence of a contract may discharge them and substitute new brokers in their places at any time.

It is therefore apparent that Paragraph (c) of the Robinson-Patman Act, as originally drawn, broadly prohibiting the payment of brokerage to anyone "acting * * * for or in behalf or * * * subject to the direct or indirect control" of buyers, without qualification as to the manner of acting or the degree or importance of control, and irrespective of services rendered to the seller, might possibly have been given a construction prohibiting the payment of brokerage to *bona fide* independent brokers—a construction which Congress manifestly did not intend it to be given.

Thus it is seen that Paragraph (c) was susceptible of a construction extending its prohibitions to others than persons acting for and as agents of buyers. The insertion of

the "except for services rendered" clause therein, it is believed, was intended by Congress not to permit the payment of brokerage to a buyer, but to make it clear that payment of brokerage to a bona fide broker in return for selling services rendered was not proscribed, thereby performing a legitimate function of a proviso "to exclude some possible ground of misinterpretation."

This view finds affirmative and authoritative support in the above cited Conference Committee Report on the Robinson-Patman Act and in the remarks of Representative Utterback in reporting the Act to the House.

The Conference Report, after referring to the retention of the words "except for services rendered," stated:

"With (these) words of the House Bill thus retained, this subsection permits the payment of compensation by a seller to his broker * * * for services actually rendered in his behalf * * *"

Mr. Utterback said:

"The bill prohibits payment or allowance of brokerage * * * except for services rendered * * * this refers to true brokerage services rendered in fact for the party who pays for them * * *." (74th Congress, 2nd Session, 80 Congressional Record, Part 9, Page 9418.)

It does not appear that Congress thought a buyer capable of rendering "services" to a seller in connection with the buyer's own purchases of goods. In writing the "services rendered" clause into Paragraph (c) Congress clearly had in mind true brokerage services rendered by bona fide independent brokers employed by sellers as their selling agents. In the opinion of the Commission that clause was inserted not by way of relaxing the limitations of Paragraph (c) insofar as they applied to buyers or buyers' agents, but by way of excluding a possible misinterpretation that the Paragraph might be held to prohibit the payment of brokerage for true brokerage service rendered by bona fide independent brokers.

Even if it were possible to hold that the payment of brokerage to buyers or the granting of any discount or allowance in lieu thereof is permissible under the "services rendered" clause, the services referred to therein, as plainly appears from the Committee Reports heretofore quoted, are brokerage or selling services rendered to the seller, and the Commission finds and concludes no such services were rendered to sellers by the Respondent or by any agent or employee of the Respondent. Whatever character may be ascribed to the various activities of the Respondent's agents from which benefits were derived by sellers, those activities were not selling services nor were any services in connection with the sale of goods to the Respondent rendered to sellers. The Respondent's field buying agents and other employees acted in every case as agents of the Respondent, having in mind and intending to serve and promote its interest, and not acting except when, and as they felt those interests could be served and promoted. The services thus rendered by the Respondent's field buying agents and other employees were not selling services in character, nor were they rendered to sellers; their services were rendered to the Respondent and to no one other than the Respondent, and the benefits derived by sellers from such services were purely incidental.

Passing now to the third point made by the Respondent, the Commission does not believe that Congress intended to permit brokerage savings to be passed on by sellers to buyers under that part of Paragraph (a) of Section 2 of the Clayton Act, as amended, which provides as follows:

Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

While Paragraphs (a) and (c) have in common the purpose of eliminating unfair price discriminations, the Commission is of the opinion that the paragraphs were intended by Congress to be separately and independently applied, and that the former was not meant to limit or qualify the prohibitions of application of the latter.

Paragraph (c) is complete on its face. It contains no ambiguous language necessitating reference to Paragraph (a) for the purpose of determining its meaning. It deals specially with a particular trade practice which was regarded by Congress as an unfair method of competition, *per se* injurious to commerce, and therefore to be prohibited. The intention of Congress to treat Paragraph (c) as independent of Paragraph (a) is apparent from both the form of the Robinson-Patman Act and from its legislative history.

As heretofore mentioned, since Paragraph (a) prohibits both direct and indirect discriminations in price, if discriminations in price as such, were the only evils at which the Act was directed there was no necessity for Congress to have enacted Paragraphs (c), (d) or (e). Looking at the Act as a whole it seems evident that the purpose of Congress was not merely to terminate the price discriminations effected by the practice of paying brokerage to buyers but to terminate the practice itself because it was an undesirable practice and constituted an inherently unfair method of competition. Paragraph (c) is expressly limited in its application solely to transactions occurring in course of interstate commerce, while Paragraph (a) is not so limited. In addition to this, Paragraph (b), relating to the burden of proof applies to proceedings instituted under Paragraphs (a), (d) and (e) but, significantly, does not apply to proceedings under Paragraph (c).

There is more than mere form, however, to indicate the independence of Paragraph (c).

Upon reference to the Senate Committee on the Judiciary, the Act was amended in Committee by the addition to Paragraph (a) of the words "other than brokerage" following the above quoted language therein permitting differentials based on differences in cost. In reporting the Bill the Senate Committee stated that the quoted words had been added to "harmonize this subsection (Paragraph (a)) with (the) subsection * * * which deals directly with the question of brokerage." (74th Congress, 2nd Session, Senate Report Number 1052, Page 5.) It is noted that it was Paragraph (a) which was amended to harmonize it with the provisions of Paragraph (c), and that the latter was referred to as the subsection which dealt directly with brokerage. By thus adding to Paragraph (a) an amendment having no other purpose whatsoever than expressly to exclude the cost proviso or differentials provision thereof from application to Paragraph (c), the Committee evidenced an unmistakable intention to subordinate the former to the latter, leaving Paragraph (c) to deal with the question of brokerage irrespective of and unaffected by the contents of Paragraph (a).

Additional affirmative evidence of this legislative intent is found in the action taken by the Committee of Conference of the House and Senate. That Committee struck from the bill as passed by the Senate the words "other than brokerage" inserted in Paragraph (a) as just mentioned. Its reason for doing so was that "the matter of brokerage is dealt with in a subsequent subsection of the bill." (74th Congress, 2nd Session, House of Representatives Report Number 2951, page 6.)

The words "other than brokerage" had never been inserted in Paragraph (a) of the House Bill. Paragraph (c) standing alone clearly was not open to a construction permitting brokerage to be passed on to buyers by way of an allowance or discount based on savings in cost. By striking from Paragraph (a) of the Senate Bill the words "other than brokerage" for the reason stated in the Conference Report, it appears to the Commission that Congress thereby exhibited not only a plain intention that Paragraph (c) exclusively should govern questions of brokerage without regard to the contents of Paragraph (a) but also the view that the words of Paragraph (c) were, in themselves alone, sufficiently broad without the aid of the Senate Amendment of Paragraph (a)

to prevent brokerage from being transmitted to buyers in the form of allowances based on savings in cost. Thus the Senate Amendment was struck, in the opinion of the Commission, not for the purpose of changing the meaning of either Paragraph (a) or Paragraph (c), but because it was tautological. This legislative construction of Paragraphs (a) and (c) as mutually independent is binding upon the Commission as a clear manifestation of legislative intent.

The Commission has not overlooked the fact that in reporting the Robinson-Patman Act to the Senate, after the Senate Committee on the Judiciary had amended Paragraph (a) by the insertion of the words "other than brokerage," Senator Logan said:

"In the second section of the Committee amendment there is a provision that in making discriminations or differentials, or whatever we may choose to call them, all costs other than brokerage shall be allowed; and it has been said that the words 'other than brokerage' in that section ought to go out.

"I have thought a good deal about that suggestion. I think perhaps legitimate brokerage ought to be allowed as a part of the costs; and I think when the bill was drafted * * * perhaps in the amendment which was inserted by the Judiciary Committee of the Senate we had in mind dummy brokerage, sham brokerage." (74th Congress, 2nd Session, 80 Congressional Record, Part 6, Page 6285.)

This statement, however, appears to support rather than to oppose the view that Paragraph (c) is not susceptible of a construction permitting the passing on of brokerage savings as differentials in cost. It demonstrates effectively that the obvious intention and only purpose of the Senate Committee on the Judiciary in adding the words "other than brokerage" to Paragraph (a) was to refute any possible contention that the differentials provisions of that Paragraph could be read into Paragraph (c). That action was thus affirmatively taken by the Committee is clearly indicative of the fact that it was not ever intended that the differentials provisions of Paragraph (a) should be construed as qualifying the scope and application of Paragraph (c). Recognizing an ambiguity inherent in the incompatability of those Paragraphs, the Committee acted to resolve that ambiguity in favor of their incompatability. Had it been intended originally that Paragraphs (a) and (c) were to be construed as interdependent, it seems clear that the Committee would have left the former unaltered or would have taken action to confirm, rather than to refute, their mutuality.

In addition to this primary evidence that Congress intended Paragraph (c) as absolute, a further, and perhaps in itself sufficient and controlling, reason why that Paragraph must be so construed lies in the duty of the Commission to apply a simple and fundamental rule of statutory construction. That rule is that as between general and specific provisions, in apparent contradiction, whether in the same or different statutes, the specific qualifies and overrules the general, that special provisions prevail over general ones which, in the absence of the special provisions, would control.

As heretofore stated, Paragraph (a) is the general paragraph of the Robinson-Patman Act. Paragraph (c) is a special paragraph dealing with the matter of brokerage only. Unquestionably the provisions of Paragraph (c) prohibit without qualification, and without reference to competition or differentials based on savings in cost, every form of concession whatsoever based on brokerage. To the extent that Paragraph (a) requires a showing of injury to competition and permits all differentials based on savings in cost it obviously conflicts and inconsistencies between them must be resolved in favor of the enforcement of the special provisions of the latter unqualified by the general provisions of the former.

If this construction of Paragraphs (a) and (c) as mutually independent and absolute were not adopted, Paragraph (c) would be deprived of all substance. Manifestly there is no difference between paying brokerage to a buyer and giving him credit for it, by way of a net price, on the purchase price of the commodities which he buys. Sellers ordinarily selling through brokers who do their own selling in particular cases always save brokerage in such cases, because no one else having performed a selling service which entitles him to receive brokerage the sellers incur no obligation to pay it. If they are permitted to pass that saving on to buyers Paragraph (c) will be completely eviscerated, and the efforts of Congress to protect commerce against a practice by which it found that price concessions were being transmitted to buyers by way of an inherently unfair method of competition will be rendered vain and useless.

While the Commission finds as a fact in this proceeding that the acceptance of discounts in lieu of brokerage by the Respondent tends to injure competition between the Respondent and its competitors and does injure competition between sellers who grant such discounts and allowances to the Respondent and those who do not, that fact has not been considered by the Commission in arriving at its conclusion herein, for the reason that the Commission concludes as a matter of law that it is unnecessary for an injurious effect upon competition to be shown in proceedings instituted under Paragraph (c).

The Commission concludes that in accepting net prices and quantity discounts, as heretofore referred to Paragraph Fourteen, *supra*, the Respondent, The Great Atlantic & Pacific Tea Company, has been and is now accepting discounts and allowances in lieu of brokerage in violation of Paragraph (c) of Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes."

By the Commission.

[SEAL] GARLAND S. FERGUSON, Jr., *Chairman.*

Dated this 25th day of January, A. D. 1938.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of The Great Atlantic & Pacific Tea Company, Respondent, testimony and other evidence, taken before William C. Reeves, an Examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto and the oral arguments of J. J. Smith, Jr., counsel for the Commission, and Caruthers Ewing, Counsel for the Respondent, and the Commission having made its Findings as to the Facts and its Conclusion that the said Respondent has violated, and is now violating, the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes as amended by an Act of Congress approved June 19, 1936, entitled 'An Act to amend Section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes' ";

It is ordered, That in purchasing commodities in interstate commerce from sellers who are engaged in selling commodities in interstate commerce to the Respondent, The Great Atlantic & Pacific Tea Company, and to purchasers thereof other than the Respondent, the said Respondent, The Great Atlantic & Pacific Tea Company, do forthwith cease and desist from:

(1) Making purchases of commodities, and the policy and practice of making purchases of commodities, at a so-called

net price, and every other price, which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling said commodities to other purchasers thereof any amount representing, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of said commodities made for said sellers by, or by said sellers through, their said brokers, and:

(2) Accepting, and the policy and practice of accepting, on its purchases of commodities from sellers any so-called quantity discounts and payments of all kinds representing, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of said commodities made for said sellers by, or by said sellers through, their said brokers, and:

(3) Accepting, and the policy and practice of accepting on its purchases of commodities from sellers prices reflecting, and all allowances and discounts representing, brokerage savings effected by sellers on their sales of commodities to the Respondent.

(4) Accepting, and the policy and practice of accepting, on its purchases of commodities all allowances and discounts in lieu of brokerage, in whatever form said allowances and discounts may be allowed, granted, paid or transmitted to the Respondent.

It is further ordered, That the Respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary*.

[F. R. Doc. 38-342; Filed, January 31, 1938; 11:27 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 31st day of January, A. D. 1938.

[File No. 32-79]

IN THE MATTER OF CUMBERLAND COUNTY POWER AND LIGHT COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Cumberland County Power and Light Company, a subsidiary company of New England Public Service Company, a registered holding company, for exemption from the provisions of Section 6 (a) of said Act of the issue and sale of 10,000 shares of its Preferred Capital Stock, 5½% Cumulative, par value $100 per share, at a price of not less than $95 per share, it being stated that the net proceeds of said sale will be used in part for the purpose of discharging existing bank loans and the balance, for the regular corporate purposes of applicant, and that such issue and sale have been expressly authorized by the Public Utilities Commission of Maine, the State in which applicant is organized and does business.

It is ordered, That a hearing on such matter be held on February 16, 1938, at ten o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That, Charles S. Moore, or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 11, 1938.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 38-332; Filed, January 31, 1938; 10:56 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 26th day of January, 1938.

[File No. 7-210]

IN THE MATTER OF STANDARD GAS AND ELECTRIC COMPANY CERTIFICATES OF DEPOSIT REPRESENTING 6% CONVERTIBLE GOLD NOTES DUE OCTOBER 1, 1935, ISSUED PURSUANT TO THE PLAN AND EXTENSION AND DEPOSIT AGREEMENT DATED JUNE 18, 1935, THE HOLDERS OF WHICH HAVE ACCEPTED THE PLAN OF REORGANIZATION DATED NOVEMBER 1, 1937

ORDER GRANTING APPLICATION UNDER SECTION 12 (F) AND 23 (A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE JF2 (B) PROMULGATED THEREUNDER

Continuance of unlisted trading privileges on the New York Curb Exchange in Standard Gas and Electric Company 6% Convertible Gold Notes, due October 1, 1935, having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule JF2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, Pursuant to Section 12 (f) and 23 (a) of the Securities Exchange Act of 1934, as amended, and Rule JF2 (b) promulgated thereunder, that the determination sought by said application be and the same is hereby made, effective upon the acceptance by the holders of such certificates of the Plan of Reorganization dated November 1, 1937 of Standard Gas and Electric Company.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 38-330; Filed, January 31, 1938; 10:55 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 26th day of January, 1938.

[File No. 7-211]

IN THE MATTER OF STANDARD GAS AND ELECTRIC COMPANY CERTIFICATES OF DEPOSIT REPRESENTING 6% CONVERTIBLE GOLD NOTES DUE OCTOBER 1, 1935, ISSUED PURSUANT TO THE PLAN OF REORGANIZATION DATED NOVEMBER 1, 1937

ORDER GRANTING APPLICATION UNDER SECTION 12 (F) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE JF2 (B)

Continuance of unlisted trading privileges on the New York Curb Exchange in Standard Gas and Electric Company 6%

Convertible Gold Notes due October 1, 1935, having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule JF2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, That the determination sought by said application be and the same is hereby made, effective upon the issuance of such certificates pursuant to the Plan of Reorganization dated November 1, 1937 of Standard Gas and Electric Company.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-328; Filed, January 31, 1938; 10:55 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 26th day of January, 1938.

[File No. 7-212]

IN THE MATTER OF STANDARD GAS AND ELECTRIC COMPANY CERTIFICATES OF DEPOSITS REPRESENTING 20-YEAR 6% GOLD NOTES DUE OCTOBER 1, 1935, ISSUED PURSUANT TO THE PLAN AND EXTENSION AND DEPOSIT AGREEMENT DATED JUNE 18, 1935, THE HOLDERS OF WHICH HAVE ACCEPTED THE PLAN OF REORGANIZATION DATED NOVEMBER 1, 1937

ORDER GRANTING APPLICATION UNDER SECTION 12 (F) AND 23 (A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE JF2 (B) PROMULGATED THEREUNDER

Continuance of unlisted trading privileges on the New York Curb Exchange in Standard Gas and Electric Company 20-year 6% Gold Notes due October 1, 1935, having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule JF2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, Pursuant to Section 12 (f) and 23 (a) of the Securities Exchange Act of 1934, as amended, and Rule JF2 (b) promulgated thereunder, that the determination sought by said application be and the same is hereby made, effective upon the acceptance by the holders of such certificates of the Plan of Reorganization dated November 1, 1937 of Standard Gas and Electric Company.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-331; Filed, January 31, 1938; 10:56 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 26th day of January, 1938.

[File No. 7-213]

IN THE MATTER OF STANDARD GAS AND ELECTRIC COMPANY CERTIFICATES OF DEPOSIT REPRESENTING 20-YEAR 6% GOLD NOTES DUE OCTOBER 1, 1935, ISSUED PURSUANT TO THE PLAN OF REORGANIZATION DATED NOVEMBER 1, 1937

ORDER GRANTING APPLICATION UNDER SECTION 12 (F) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE JF2 (B)

Continuance of unlisted trading privilege on the New York Curb Exchange in Standard Gas and Electric Company 20-Year 6% Gold Notes due October 1, 1935, having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule JF2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, That the determination sought by said application be and the same is hereby made, effective upon the issuance of such certificates pursuant to the Plan of Reorganization dated November 1, 1937 of Standard Gas and Electric Company.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-329; Filed, January 31, 1938; 10:55 a. m.]